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No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1996

TULARE COUNTY DEPARTMENT
OF HEALTH SERVICES,

Petitioner,

vs.

LYDIA MARY MORAN,

Respondent.

On Petition For Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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16 pp

QUESTION PRESENTED FOR REVIEW

I. Whether a settlement agreement of a Title VII claim between an employee of a public entity and the public entity entitles the employee to reinstatement *under any circumstances* even though that employee requested and was placed on medical leave for psychological reasons, and has been currently diagnosed as psychologically unfit to work, because the means by which the current medical information was obtained, a fitness for duty exam, was not explicitly mentioned in the agreement itself.

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The caption in this case contains the names of all the parties.

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PETITION FOR A WRIT OF CERTIORARI

The County of Tulare respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The memorandum opinion of the court of appeals (App. 1-2) and its order denying the County of Tulare's petition for rehearing (App. 16) are unreported. The opinion of the district court (App. 12-15) is unreported.

JURISDICTION

The court of appeals entered its memorandum opinion on October 25, 1996 (App. 1-2) and, thereafter, entered its order denying the County of Tulare's petition for rehearing on April 23, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS IN ISSUE

Fourteenth Amendment to the United States Constitution, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title VII of the Civil Rights Act of 1964, Title 42 United States Code section 2000e et seq. (Relevant sections set forth in full in App. 17-21.)

STATEMENT OF THE CASE

A. Facts Giving Rise to this Case

Lydia Mary Moran was an Office Assistant with the Tulare County Department of Health Services in Visalia, California from 1985 to 1990, when she submitted her resignation. Prior to the effective date of the resignation, Ms. Moran requested and was granted a transfer to the Tulare County Department of Social Services as an Office Assistant where she worked until she became ill in June 1992. At that time, she was diagnosed by various mental health professionals (including a psychiatrist and a licensed clinical social worker) as suffering from major depression with psychotic features, involutional dysthymia, and stress-related symptoms. In June 1992, she was hospitalized for ten days. She did not return to work and received state disability. She also filed a workers compensation action, alleging she was disabled due to a psychological condition. In August 1992, Ms. Moran was diagnosed by a psychiatrist as being "grossly psychotic"

and hospitalization was recommended. In November 1992, Ms. Moran's mood and thought processes were dysfunctional and her insight and judgment were poor, but she was refusing to take prescribed medications, had not entered the hospital as recommended, and had not pursued out-patient psychotherapy. Ms. Moran's psychiatrist stated he did not envision Ms. Moran returning to gainful employment. In 1993, Ms. Moran began receiving SSI payments due to her psychiatric disability.

In November 1990, Ms. Moran filed a complaint with the U.S. Equal Employment Opportunity Commission, alleging discrimination by the Tulare County Health Services Department because of her ancestry (Hispanic). She received a notice of right to sue and, in October 1992, Ms. Moran filed a complaint in the U.S. District Court for the Eastern District of California. The complaint was amended once and, for a period of a year, Ms. Moran attempted to obtain counsel to represent her. She was unsuccessful in obtaining counsel and the matter proceeded with her acting pro se.

The discrimination action [in conjunction with the workers' compensation action] was settled in open court and approved by the U.S. Magistrate on June 10, 1994. This agreement was reduced to writing and signed on July 26, 1994. The settlement agreement provided for no admission of wrongdoing by the County, payment of money to Ms. Moran, establishment of a bilingual services policy by the County of Tulare, a statement that Ms. Moran would be considered to be on a leave of absence, and a restatement of the County of Tulare's Personnel Rule with regard to Ms. Moran's already-existing right to reinstatement after such a leave. Ms. Moran was paid a

total of forty-five thousand dollars [$45,000.00] in settlement of her discrimination and workers' compensation claims.

In November 1994, Ms. Moran appeared at the County of Tulare's Personnel Department with a slip from a general practitioner [not a psychiatrist or psychologist] stating she could return to work. Pursuant to the County of Tulare's policy requiring all employees who returned from medical leave to demonstrate that the employee is medically able to work, the Personnel Director requested that Ms. Moran receive a "fitness for duty" examination. Ms. Moran consented to such an examination, and was examined by a psychologist, who found Ms. Moran was "not psychologically fit to return to work at this time", and would not be able to work without first undergoing the treatment she had continuously refused since 1992. That psychologist diagnosed Ms. Moran as having Depressive Disorder in partial remission, and having Histrionic, Dependent and Passive-Aggressive Personality Disorder traits.

Only after being advised of the psychologist's finding, Ms. Moran objected to having been required to undergo the fitness for duty examination in the first instance, contending that, under the settlement agreement, the County of Tulare was required to reinstate her without having to consider her fitness to work and that the County's insistence on a fitness for duty examination was inappropriate and unjustified. The County of Tulare maintained that fitness for duty is a reasonably implied term of the settlement agreement and that a fitness for duty examination is required in order to fulfill the

County's duty to its employees to avoid placing them in a position with an unreasonable risk of harm.

B. The Initial Proceedings

The County of Tulare filed a motion with the U.S. District Court seeking enforcement and instructions relating to the settlement agreement. The motion was referred to a Magistrate Judge for report and recommendation. On May 23, 1995, the Magistrate Judge found that, in light of the current psychologist's report and the prior psychiatrist's report, the County was acting with appropriate caution and responsibility in seeking a determination of whether Ms. Moran was psychologically fit to return to duty and that such a condition was an appropriate condition which should reasonably be implied as a term of the settlement agreement. After considering the recommendations by the Magistrate Judge and objections by Ms. Moran, and conducting a de novo review of both the agreement and the record, U.S. District Judge Robert E. Coyle, concurring with the Magistrate's recommendation that an implied condition of the settlement agreement was that Ms. Moran submit to a fitness for duty examination in order to determine whether she was fit to work, concluded that the settlement agreement was not breached when Ms. Moran was required to undergo an examination by a mental health professional. The U.S. District Judge granted the County of Tulare's motion to enforce the settlement agreement and petition for instruction. The U.S. District Judge found that the court retained jurisdiction over the settlement agreement pursuant to *Kokkonen v. Guardian Ins. Co. of America*, 511 U.S. 375, 114 S.Ct. 1673 (1994).

C. The Appeal

On July 20, 1995, Ms. Moran appealed from U.S. District Judge Coyle's decision. Ms. Moran's request for oral argument was denied and no oral argument was held. In a decision filed October 25, 1996, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit conducted a de novo review of the settlement agreement [but apparently did not review the entire record de novo] and, in a memorandum opinion, concluded that the language in the settlement agreement was clear and unambiguous and did not imply that, before Ms. Moran can be reinstated, she must submit to a psychological examination to determine if she is fit to return to work. The Court of Appeals reversed the U.S. District Court's order granting the County of Tulare's motion to enforce the settlement agreement. The Court of Appeals found jurisdiction pursuant to the collateral order doctrine, citing as authority *Richardson-Merrell, Inc. v. Koller,* 472 U.S. 424 (1985).

On November 8, 1996, the County filed a Petition for Rehearing with Suggestion for Rehearing En Banc. In the Petition, the County pointed out that the Rule of Practical Construction, recognized under both state and federal law, provides that the construction of a contract as shown by the acts and conduct of the parties in regard to the contract before any controversy arose as to its meaning is to be used to determine the meaning of the contract regardless of whether the literal wording of an agreement is clear and unambiguous. On April 23, 1997, the U.S. Court of Appeals for the Ninth Circuit denied the County's Petition for Rehearing. This Petition for Writ of Certiorari followed.

REASONS WHY CERTIORARI SHOULD BE GRANTED

Review is Warranted Because The Opinion By the Ninth Circuit Court of Appeals is in Conflict with its Own Decisions

A. The Ninth Circuit Court of Appeals has ruled that medical fitness examinations in employment are appropriate.

Just six weeks prior to the Ninth Circuit Court of Appeal's memorandum opinion in this case, another Ninth Circuit panel decided *Yin v. State of California*, 95 F.3d 864 (9th Cir. 1996). The holding in *Yin* is clearly inconsistent with the Ninth Circuit's holding in this case. In *Yin*, an employee had a history of medical problems which required her to be off work. After yet another absence of thirty consecutive days, Yin was directed to submit to an independent medical examination. She filed suit to keep the State of California, her employer, from ordering her to submit to the examination or disciplining her for refusal. The Ninth Circuit found that the employer had good cause to determine whether Yin was medically able to perform her job. The Court stated:

> We conclude that when health problems have had a substantial and injurious impact on an employee's job performance, the employer can require the employee to undergo a physical examination designed to determine his or her ability to work, even if the examination might disclose whether the employee is disabled or the extent of any disability. (*Id.*, p. 868.)

The Court went on to conclude that the interest of the State in determining whether and to what extent Yin was

medically able to work overrode Yin's privacy interest. The Ninth Circuit's holding in this case is at direct odds with the holding in *Yin*. If Ms. Moran had already been working and, while working, demonstrated a reasonable cause for concern as to her medical fitness, under *Yin* she could have been directed to undergo a fitness for duty examination. If she had been on leave which was not included in a settlement agreement, presumably the result would be the same. However, under the holding in this case, because the agreement did not explicitly state that Ms. Moran, in order to be reinstated, had to be medically able to actually perform work, no examination or even inquiry will be permitted. In addition to the circular absurdity of that result, the decision in this case is entirely inconsistent with the holding and policy expressed in *Yin*.

B. The Ninth Circuit Court of Appeals has held that contracts must be interpreted according to the law of the jurisdiction in which the contract was made, yet failed to follow the law of the State of California and its own precedent in reviewing the settlement agreement and surrounding circumstances in this matter.

The Ninth Circuit Court of Appeals, in *Miller v. Fairchild Industries (Miller I)*, 797 F.2d 727 (9th Cir. 1986), regarding interpretation of a settlement agreement in a Title VII discrimination case, stated as follows:

> Settlement agreements have the attributes of contracts, and they should be construed as such.[Citation omitted.] In construing the settlement agreements here, **we apply principles of**

California contract law. (Emphasis added.) (*Ibid*. at p. 733.)

The Court of Appeals for the Ninth Circuit failed to apply California law generally in regard to implied conditions, and specifically in regard to the Rule of Practical Construction. First, as the Court of Appeal pointed out in *Miller I, supra,* a settlement agreement is essentially a contract. Under California statute, those terms which are necessary to make a contract reasonable, or are necessary to carry it into effect, are implied conditions. (California Labor Code §§ 1655, 1656.)

All employers in California are required by statute to provide employment for employees which is free from danger to the life, safety or health of those employees. (California Labor Code § 6306, subd. (a).) Further, under California common law, an employer has a duty to furnish an employee with a reasonably safe work place in which to work. (*Devins v. Goldberg*, 33 Cal.2d 173 (1948).) Since all employers are legally required to ensure their employees are provided employment which is medically safe, clearly it is a reasonably implied condition of the settlement agreement that to reinstate Ms. Moran to employment it must be medically safe and that she be able to actually work.

The Court of Appeal, in reaching its conclusion regarding the implied condition set forth above, also ignored the Rule of Practical Construction, a principle both of California law and of the Ninth Circuit. It is a well-established principle of California contract law that when the parties to a contract perform under it and demonstrate by their conduct that they knew what they

were talking about, the courts should enforce the parties' intent. This is known as the "rule of practical construction". (*Crestview Cemetery Assn. v. Dieden*, 54 Cal.2d 744, 754 (1960).) The rule is based on the "common sense concept" that actions speak louder than words. (*Id.*)

Even when the actual words of a contract standing alone might mean one thing to a court, where the parties by their actions have demonstrated that to them the contract meant something quite different, the meaning and intent of the parties should be enforced. (*Id.*) Specifically in regard to the proposition that a court should not look beyond the literal wording of a document,

> [a] rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained. (*Automobile Salesman's Union v. Eastbay Motor Car Dealers Inc.*, 10 Cal.App.3d 419, 423 (1970), citing *Pacific Gas & Electric Co. v. G.W. Thomas Drayage etc. Co.*, 69 Cal.2d 33, 37 (1968).)

The facts in *Miller I, supra,* support the County of Tulare's position. In that case, plaintiffs settled a Title VII case in which they alleged discrimination based on race. Terms of the no-fault settlement included promises by the employer to provide transfers, performance and merit reviews and training opportunities. Two months after the settlement agreement was signed, the plaintiffs were laid off. The plaintiffs alleged breach of the settlement agreement; the defendants claimed that the agreement did not

consider layoff or seniority. Neither layoff nor seniority were explicitly discussed in the agreement.

The Court held that the fact that the agreement did not explicitly address layoff was not determinative. The Court found given that the plaintiffs had waived their right to sue in exchange for future employment opportunities, it was reasonable to imply in the agreement that the plaintiffs had some expectation that their employment would continue.[1]

Another way to view the matter is that the parties, by their actions, **create** an ambiguity in the contract. "The ambiguity can be created where the parties have demonstrated **by their actions and performance** what the contract meant to them, even though the words, standing alone, might have a different meaning to the court". (Emphasis added.) (*Ibid.* at p. 424.)

Not surprisingly, given the Rule of Practical Construction set forth above, the acts and conduct of the parties **before** any controversy has arisen is entitled to great weight and, when reasonable, is to be adopted and enforced by the court. (*Woodbine v. Van Horn*, 29 Cal.2d 95, 104 (1946); *Automobile Salesmen's Union v. Eastbay, Motor Car Dealers Inc., supra*, 10 Cal.App.3d at 424.) In fact, "[t]he conduct of the parties after execution of the contract and before any controversy has arisen as to its effect affords the **most reliable evidence** of the parties'

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[1] We note that this case also supports Petitioner's original contention on appeal that the parties and the Court may reasonably imply terms to an agreement which are not explicitly stated. In the *Miller I* case that principle worked to the advantage of the plaintiffs; Petitioner seeks the same protection.

intentions." (Emphasis added.) (*Hernandez v. Badger Construction Equipment Co.* 28 Cal.App.4th 1791, 1814 (1994), citing *Kennecott Corp. v. Union Oil Co.*, 196 Cal.App.3d 1179, 1189 (1987).)

Ms. Moran's conduct before she was refused reinstatement is entirely consistent with the County of Tulare's interpretation of the Settlement Agreement as including a reasonably implied condition that Ms. Moran be medically fit to work before being reinstated. Ms. Moran, by the terms of the Settlement Agreement, was an employee on medical leave both before and after the agreement was signed and before she sought reinstatement. She had a history of job-related medical problems, which had resulted in her being unable to work before this matter was settled. The County of Tulare had a policy, which had been in place well before the settlement of Ms. Moran's claims, of requiring all employees who returned from medical leave to demonstrate that the employee is medically able to work.

At the time that Ms. Moran came to the Personnel Department seeking reinstatement under the Settlement Agreement, she brought to the Personnel Department a **medical release** from her doctor. That was done at her own instigation. Ms. Moran clearly understood, at the time she first sought reinstatement, **before** there was any controversy over the settlement terms, that to be reinstated she had to be medically able to work. She agreed to go to the examination scheduled by the County; her only expressed concern was the time delay. It was only **after** Ms. Moran had undergone and "failed" the examination that she complained that such was not required under the agreement.

Ms. Moran had [and for that matter still has] available to her an administrative appeal procedure, as do all County employees. Ms. Moran refused to follow the procedure, instead insisting only **after** the examination by Dr. Reed that she was not required to demonstrate fitness at all but was entitled to reinstatement under any circumstances by virtue of the agreement.

Under California law, the most reliable evidence of what the parties intended is how they conducted themselves in regard to the agreement before any controversy arose. Using that test, it is clear that **both** Ms. Moran and the County of Tulare understood that she was on leave, that she had a history of medical problems, and that she needed to demonstrate medical fitness before she could be reinstated to any employment. The County of Tulare has never wavered from that position. Ms. Moran only deviated from that position after it was determined she was not medically able to safely return to work.

C. The rigid position adopted by the Ninth Circuit Court of Appeals is in conflict with its own commitment and that of this Court favoring settlement of disputes.

The Ninth Circuit Court of Appeals has long expressed its commitment to the rule that the law favors and encourages settlement agreements. (*Ahern v. Central Pacific Freight Lines*, 846 F.2d 47, 48-9 (1988).) The Court has stated, citing this court as authority:

> We are committed to the rule that the law favors and encourages compromise settlements. (Citation.) We recently noted that there is an **overriding public interest** in settling and quieting

> litigation. (Citation.) (Emphasis added, citations omitted.) (*United States v. McInnes*, 556 F.2d 436, 441 (9th Cir. 1977).)

The Ninth Circuit Court of Appeals has found settlement to be of such importance that it has established its own appellate settlement program. (Circuit Rule 33-1.)

As this Court has noted, it is both desirable and common for cases such as this case to be settled by agreement. (See, e.g., *Marek v. Chesny*, 473 U.S. 1, 10, 105 S.Ct. 3012, 3017 (1985); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 305, 106 S.Ct. 1842, 1863 (1986) (dissenting opn.).) However, if the brief ruling of the Court of Appeal for the Ninth Circuit is allowed to stand in this case, it will dictate an unsound result which was clearly never intended by the parties. Literally interpreted, the County is required to reinstate Ms. Moran to employment no matter what her physical or mental condition may be and without regard to whether or not she can do the job.

The rigid interpretation of the Settlement Agreement required by the decision is inconsistent with this Court's stated policy of encouraging the voluntary settlement of disputes. It is only reasonable to expect that any employee must be medically able to do his or her work. To hold otherwise only because of the Court of Appeal's literal interpretation of a settlement agreement will certainly discourage parties from voluntarily settling their disputes in similar cases.

CONCLUSION

If this decision is allowed to stand, the citizens of the County of Tulare will be faced with reinstatement of, or in the alternative **additional** payments of money to, an employee who was, at the time of her request for reinstatement, medically unable to work according to a licensed medical professional. The County of Tulare's Personnel Rules and system will be applied without uniformity; there will be one set of rules for all other employees, and another set of rules for Ms. Moran. California State law will not be applied appropriately; an employee will be reinstated even though she was not medically able to work. The decision of the U.S. Court of Appeals for the Ninth Circuit will create legal, administrative and financial havoc for the County of Tulare, its employees and its taxpayers. It will certainly chill the likelihood of future settlements by the County of Tulare in similar cases, and likely will similarly chill other public entities.

Based on the foregoing, petitioners respectfully submit that this petition for writ of certiorari should be granted.

Dated: July 17, 1997

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LYDIA MARY MORAN, Plaintiff-Appellant, v. COUNTY OF TULARE, Department of Health Services, Defendant-Appellee.	No. 95-16367 D.C. No. CV-92-05694-REC MEMORANDUM* (Filed Oct. 25, 1996)

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Chief Judge, Presiding

Submitted July 29, 1996**

Before: HUG, Chief Judge, SCHROEDER and TASHIMA, Circuit Judges.

Lydia Mary Moran appeals pro se the district court's order granting defendant's motion to enforce the settlement agreement. We have jurisdiction pursuant to the collateral order doctrine, *see Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 431 (1985), and we reverse.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, Moran's request for oral argument is denied.

After a de novo review of the settlement agreement, *see Davies v. Grossmont Union High School Dist.*, 930 F.2d 1390, 1394 (9th Cir.), *cert. denied*, 501 U.S. 1252 (1991), we conclude that the language of paragraph 9 of the settlement agreement is clear and unambiguous. It does not imply that, before Moran can be reinstated, Moran must submit to a psychological examination to determine if she is fit to return to work. Accordingly, we reverse the district court's order granting defendant's motion to enforce the settlement agreement.

REVERSED.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN of the State of California, Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES, Defendants.	CV F-92-5694 DLB REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION (Filed May 23, 1995)

Defendants brought this motion seeking enforcement and/or instructions relating to the settlement agreement entered into between the parties on July 26, 1994. This motion was referred to the undersigned Magistrate Judge for report and recommendation by order of the Honorable Robert E. Coyle, United States District Court Judge, on April 5, 1995.

BACKGROUND

Plaintiff filed her original complaint *pro se* on October 16, 1992 and after several continuances of the scheduling conference, owing to attempts to obtain counsel to represent Plaintiff and after hearing on Defendants' motion for more definite statement, Plaintiff filed her amended complaint on March 11, 1994. On June 10, 1994, a Settlement Conference was held in the chambers of the undersigned at which time the parties reached agreement of terms of

settlement which were recited in open court on the record and agreed to by Plaintiff and by Ms. Kathleen Bales-Lang, principal attorney for the Tulare County Counsel. Subsequently, a written Settlement Agreement and Release reflecting the terms of the settlement was drafted and executed by the parties on July 26, 1994. The written Settlement Agreement and Release was attached as an exhibit to Plaintiff's request for dismissal of the action which was lodged on August 8, 1994 and adopted by the court on August 9, 1994.

The terms of the settlement agreement which are in dispute on the instant motion is paragraph number 9 on page 8 which read as follows:

> 9. Leave and Reinstatement: LYDIA MORAN shall be considered to be on leave of absence without pay pursuant to Tulare County Personnel Rule 6.10.1, for a period of one year from June 10, 1994. LYDIA MORAN shall have the right of reinstatement to a vacant position of Office Assistant II with COUNTY OF TULARE until June 10, 1995. If LYDIA MORAN has not reinstated to employment on or before June 10, 1995, she shall be deemed to have resigned her employment, and her employment shall terminate on June 11, 1995. In the event that her employment is terminated pursuant to this paragraph, LYDIA MORAN hereby waives any rights to administrative appeal for dismissal for cause pursuant to Tulare County Personnel Rule 12.
>
> Settlement and Release Agreement Page 8, paragraph 9, lines 7-18.

It is undisputed that in November 1994, Plaintiff contacted the Tulare County Personnel Department and

sought reinstatement pursuant to the above quoted provision of the Settlement Agreement and Release. In connection with her request for reinstatement Plaintiff presented a written release to return to work form signed by her personal physician, Dr. Miyakawa. The form signed by Dr. Miyakawa indicated that Plaintiff could return to work as of December 1, 1994 at her present job and duties and that no further treatment was required.

In response to her request, and Dr. Miyakawa's release, the Tulare County Personnel Department informed Ms. Moran that she would be required to undergo an examination by a mental health professional chosen by the County in order to ensure that she was fit to return to work. Personnel Department made arrangements for Plaintiff to receive a "fitness for duty exam" from Bruce T. Reed, PHD. After interviewing Ms. Moran, reviewing the records of her prior mental health treatment and evaluations and conducting psychological tests Mr. Reed was of the opinion that Ms. Moran was not fit to return to duty without further counseling.

Ms. Moran contends that the examination was not appropriately conducted, disagrees with Mr. Reed's opinion and objects that the County should have used a neutral doctor.[1] Although, pursuant to its policy and

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[1] The declaration of Vernon Ribeiro indicates that Mr. Reed was chosen by a referral from Fimbres Adjustors, the County's third party worker's compensation administrators. Furthermore, the declaration of Jim Brinkerhoff, Tulare County Personnel Director, indicates that he had no conversations or contact with Mr. Reed "regarding the content or desired outcome of Ms. Moran's examination and did not know until

practice, the County offered Ms. Moran a third "tie breaker" examination by a mental health professional and also agreed that she could chose the third examiner from a list to be provided by the County, Ms. Moran refused. According to declarations filed in support of the Defendants' motion the County's standard procedure for administrative appeals from determinations relating to fitness of duty is to obtain a third "tie breaker" opinion in the event that the first two opinions differ regarding the employees fitness to return to duty.

Plaintiff contends that the above quoted provision of the settlement agreement and release provides for her unconditional reinstatement and the County's insistence on a "fitness for duty" examination is inappropriate and unjustified. The County maintains that fitness to return to duty is an implied term of the settlement agreement and release and that such an examination is required in order to fulfill the County's duty to its employees to avoid placing them in a position with an unreasonable risk of harm.

JURISDICTION

A District Court does not have the "inherent power" to enforce a settlement agreement between the parties which resulted in the dismissal of an action unless " . . . the parties' obligation to comply with the terms of the settlement agreement. . . . [is] made part the order of

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after the exam who the examining physician was". (Brinkerhoff declaration page 2, lines 15-17.)

dismissal – either by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating the terms of the settlement agreement in the order. In that event, a breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." *Kokkonen v. Guardian Life Ins. Co. of America*, ___ U.S. ___, 114 Sup.Ct. 1673, 1977 (1994).

Contrary to the facts of *Kokkonen* the Settlement Agreement and Release in this case was incorporated as part of Plaintiff's request for dismissal and filed as an attachment to that request. Additionally, paragraph 4 of the Settlement Agreement and Release provides as follows:

> For Continuing Jurisdiction: The federal court shall retain jurisdiction over the settlement in this matter to insure that the policy referenced in paragraph 3 is in fact implemented, and that same contains the minimum requirements specified in paragraph 3. The court shall retain no other jurisdiction over the contents of the policy. Once said policy has been implemented, the court's jurisdiction over this agreement shall terminate, provided that all other terms and conditions of this agreement have been complied with.
>
> Settlement and Release Agreement, pages 6-7, paragraph 4.

While it is apparent from a plain reading of paragraph 4 that the parties intended the court to retain jurisdiction over the settlement agreement with respect to the bilingual employee policy the fact that the agreement conditioned the termination of the court's jurisdiction over the

agreement upon the fulfillment of all other terms and conditions of the agreement reflects the parties intent that the court retain jurisdiction over the entire agreement to enforce its terms at least until the bilingual employee policy had been implemented. Since it appears from the declarations filed by Defendants in support of their motion that the policy regarding bilingual employees has not yet been implemented it appears that this court has jurisdiction to enforce the terms of the settlement agreement.

FITNESS FOR DUTY EXAMINATION

As stated above, Plaintiff maintains that paragraph 9 of the settlement agreement regarding her right to reinstatement gives her the right to unconditional reinstatement to a vacant position of Office Assistant II. However, in argument on this motion Plaintiff conceded that if she were physically unable to perform the task of Office Assistant II the right to reinstatement would not apply. As Defendant points out in its points and authorities all contracts are subject to implied conditions. The question remains, however, whether the instant agreement, under the facts as presented, is subject to a implied condition that Plaintiff take a fitness for duty examination and be certified as fit to return to duty by a County employed examiner.

In support of her argument that such an examination is unnecessary and inappropriate under the terms of the agreement, Plaintiff points out the terms of the settlement and release in her worker's compensation action provide

"there is no need for future medical care".[2] Furthermore, the compromise and release in the worker's compensation claim provided that "settlement herein is based upon the agreed medical examination report of Dr. Ronald Lowell dated June 2, 1994, which the DEU has rated as follows: 1.4-15-40X-22-28:2 equals $15,820.00". From a reading of Dr. Reed's report (which was submitted by Defendants in support of this motion) it appears that Dr. Lowell's supplemental report found that Ms. Moran was permanent, stationary and rateable as of September 7, 1993 and that while he noted permanent psychiatric impairment he did not recommend further treatment and did not believe that "Ms. Moran would be able to return to employment for Tulare County. To do so would only reactivate traumatic memories and she would soon be more symptomatic on a psychiatric basis and unable to continue her employment." (Dr. Reed's report at page 6 quoting from Dr. Lowell's report.) Thus, while the opinion referred to and relied on in rating Ms. Moran on her worker's compensation claim found that no future medical care was necessary, it also found that returning to work might be harmful to Ms. Moran's psychiatric condition. In his report Dr. Lowell further stated that "I believe she will continue to be resistive to any kind of psychiatric or psychological care and will also be resistive to vocational rehabilitation services". (Dr. Reed's report at page 6, quoting from Dr. Lowell's supplemental report.)

---

[2] Settlement of Ms. Moran's worker's compensation action was part and parcel of the settlement of her claims in this action and incorporated in the Settlement Agreement and Release. Furthermore her claims in that proceeding were related to her claims in this action.

In light of Dr. Reed's and Dr. Lowell's reports and opinions it appears that the County was acting with appropriate caution and responsibility in seeking a determination of whether Ms. Moran was psychologically fit to return to duty. This condition, especially in light of the past history, is an appropriate condition which should reasonably be implied as a term of the Settlement Agreement and Release.

The administrative appeal by examination by a third "tie breaker" mental health professional remains available and if Ms. Moran desires reinstatement she must pursue it. The question might still remain after the examinations whether they were fair and the conclusions justified however, Ms. Moran must first participate in the tie breaker examination before any such claims may be raised. The County's motion should be granted.

This report and recommendation is submitted to the Honorable Robert E. Coyle, United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 631 *et seq.* and Rule 305 of the Local Rules of Practice for the Eastern District of the United States District Court for the Eastern District of California. Within ten days after being served[3] with a copy, any party may serve on opposing counsel and file with the court written objections to such proposed findings and recommendations. Such a document should be captioned "Objections to Magistrate's Report

---

[3] If service is effectuated by mail, three days shall be added to the time for filing objections to the report and recommendation. *See*, Rule 6(e) of the Federal Rules of Civil Procedure and Rule 136 of the Local Rules of the United States District Court for the Eastern District of California.

and Recommendations." Replies to the objections shall be served and filed within ten (10) days after service[4] of the objections. The court will then review the magistrate's ruling pursuant to 28 U.S.C. § 636(b)(1).

FAILURE TO FILE OBJECTIONS WITHIN THE SPECIFIC TIME WAIVES THE RIGHT TO APPEAL THE MAGISTRATE JUDGE'S FACTUAL FINDINGS, BUT WILL NOT AFFECT YOUR RIGHT TO APPEAL THE CONCLUSIONS OF LAW MADE BY THE MAGISTRATE JUDGE IF ADOPTED BY THE DISTRICT COURT.

DATED: 5/18/95

/s/ Dennis L. Beck
DENNIS L. BECK
U.S. MAGISTRATE JUDGE

---

[4] Three days shall be added to the time for filing a reply if service of the objections to the Magistrate Judge's report and recommendation is accomplished by mail. *See,* n. 1.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN, Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES, Defendant.	No. CV-F-92-5694 REC ORDER RE DEFENDANT'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION (Filed July 12, 1995)

On May 23, 1995, the United States Magistrate recommended that this court grant defendant's Motion to Enforce Settlement Agreement and Petition for Instruction.

On May 30, 1995, plaintiff timely filed objections to the recommendation. Defendant timely filed an opposition to plaintiff's objections on June 2, 1995.

The issues involved in this recommendation are whether this court has jurisdiction to hear this motion given the wording of the provision in the settlement agreement providing for continuing jurisdiction and, if the court has jurisdiction, whether the settlement agreement has been breached.

The court has conducted a *de novo* review.

A. Jurisdiction.

The court has reviewed the record herein and concurs with the Magistrate's conclusion that the court has jurisdiction to hear defendant's motion. However, as explained below, the court reaches this conclusion for reasons different than those articulated by the Magistrate.

On June 27, 1994, the court issued its Order Re Defendant's Motion to dismiss Amended Complaint. The motion was one for dismissal of the causes of action for employment discrimination based on sex and age and for dismissal of pendent causes of action. For some reason, the motion was granted by concluding that "summary judgment for defendant is granted". The Order also directed entry of judgment. Accordingly, judgment for defendant was entered on June 28, 1994.

However, the direction for entry of judgment and the entry of judgment were in error because plaintiff's claims for employment discrimination on the grounds of national ancestry and of reprisal remained in the case. Moreover, summary judgment should not have been granted but, rather, dismissal of the causes of action the subject of the motion.

On August 11, 1994, plaintiff filed a document captioned "Plaintiff's Request for Dismissal". This Request for Dismissal states: "Please dismiss this action. See attached Settlement Agreement and Release with Defendant and Respondent County of Tulare." Stamped at the bottom of the Request for Dismissal is a stamped "It is so Ordered" dated and signed by the undersigned on August 9, 1994. No judgment of dismissal has ever been entered.

The court concludes that the judgment entered on June 28, 1994 should be vacated on the ground that it was entered in error because the court's order directing entry of summary judgment was in error. Because no judgment dismissing the action pursuant to the settlement agreement has been entered, the court concludes that the court still retains jurisdiction notwithstanding the interpretation of the provisions of the settlement agreement providing for retention of jurisdiction in light of *Kokkonen v. Guardian Life Ins. Co. of America*, ___ U.S. ___, 114 S.Ct. 1673 (1994). This is because the entry of judgment must be a separate document from the order dismissing an action in order to start the time for appeal. Without that entry of judgment, the district court does not lose jurisdiction. *See Allah v. Superior Court of State of Cal.*, 871 F.2d 887, 890 (9th Cir. 1989).

Therefore, although the court would have concured with the Magistrate's recommendation if judgment of dismissal incorporating the settlement agreement had been entered, the fact that it was not means that this court never lost jurisdiction and may proceed to determine whether the settlement agreement has been breached.

B. Breach of Settlement Agreement.

The court also concurs with the Magistrate's recommendation that an implied condition of paragraph 9 of the Settlement Agreement is that plaintiff submit to a "fitness for duty exam" in order to determine whether plaintiff was fit to return to work. Consequently, the court concludes that the Settlement Agreement was not

breached when plaintiff was required to undergo an examination by a mental health professional.

ACCORDINGLY, IT IS ORDERED that defendant's Motion to Enforce Settlement Agreement and Petition for Instruction is granted.

IT IS FURTHER ORDERED that the judgment for defendant entered on June 28, 1994 is vacated.

Dated: July 10, 1995

/s/ Robert E. Coyle
ROBERT E. COYLE
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYDIA MARY MORAN, Plaintiff-Appellant v. COUNTY OF TULARE, Department of Health Services, Defendant-Appellee.	No. 95-16367 D.C. No. CK-92-06694-REC Eastern California (Fresno) ORDER (Filed April 23, 1997)

Before: HUG, Chief Judge, SCHROEDER and TASHIMA, Circuit Judges.

The panel has voted to deny appellee's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

§ 2000e, Definitions

For the purposes of this subchapter –

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any

agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization –

> **(1)** is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C.A. § 151 et seq.];
>
> **(2)** although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
>
> **(3)** has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of

employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, on an appointee on the policy making level or an immediate advice with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or

between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C.A. § 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United Sates, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not

require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided,* That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

(Pub.L. 88-352, Title VII, § 701, July 2, 1964, 78 Stat. 253; Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub.L. 92-261, § 2, Mar. 24, 1972, 86 Stat. 103; Pub.L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub.L. 95-598, Title III, § 330, Nov. 6, 1978, 92 Stat. 2679; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 102-166, Title I, §§ 104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

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UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION [FRCP 54 (C)] (Filed Apr. 5, 1995) Date: May 1, 1995 Time: 10:00 a.m. Courtroom:

Defendant, COUNTY OF TULARE, by and through its attorneys, provides the following points and authorities in support of its Motion to Enforce Settlement Agreement and Petition for Instruction:

BACKGROUND

Plaintiff Lydia Moran filed a complaint against Defendant County of Tulare in October of 1992[1], alleging that the County of Tulare had discriminated against her because of her ancestry [Hispanic]. That complaint was thereafter amended in response to Defendant's Motion. A Motion to Dismiss the Amended Complaint was pending at the time that this action was settled.

Settlement of this action was reached in open court on June 10, 1994, and was approved by Magistrate Judge Dennis Beck. Thereafter, the settlement was reduced to writing. [See Declaration of Kathleen Bales-Lange.]

The settlement contained two basic provisions: payment of money to Plaintiff, and establishment of a bilingual services policy by the County. The County was to use all best efforts to have a policy in place by June 10, 1995. [See Exhibit A to Declaration of Kathleen Bales-Lange.]

Also in the agreement was a restatement of Plaintiff's existing right to reinstate to her employment [paragraph 9 of the Agreement].

The sums required to be paid to Plaintiff have been paid. [See Declaration of Pamela J. Rutherford, Declaration of Travis Steagall.] Preparation of the bilingual services policy is in process. [See Declaration of John Rodriguez.]

---

[1] Mrs. Moran also filed a virtually identical action in state court. [Tulare County Superior Court No. 155743]

In November of 1994, Plaintiff appeared at the Personnel Department with a slip from a physician stating she could return to work. The statement was signed by Dr. Miyakawa [See Declaration of Kathleen Bales-Lane, Exhibit F.] [See Exhibit G of Declaration of Kathleen Bales-Lange.]

Since Plaintiff had left her employment and filed a Workers' Compensation claim alleging she was disabled due to a psychological condition, Jim Brinkerhoff, Tulare County Personnel Director, directed that Plaintiff must be given a fitness for duty examination. This direction was in accord with general policy of the County Personnel Department. [See Declaration of Jim Brinkerhoff.]

Plaintiff was examined by Dr. Bruce Reed, a psychologist licensed to practice in the State of California. Doctor Reed submitted a written report indicating that Plaintiff was not fit for duty. [See Declarations of Jim Brinkerhoff and Vernon Ribeiro.]

Plaintiff was advised of Doctor Reed's report. [See Declarations of Kathleen Bales-Lange and Vernon Ribeiro.] Plaintiff subsequently hired an attorney to press for her claim for reinstatement. Mr. Brinkerhoff, at the request of Plaintiff's attorney, advised Plaintiff of her administrative remedy. In a case where the employee's doctor and the County's doctor disagree as to the employee's fitness, the county sends the employee to a third doctor for an opinion. That third opinion then becomes the "tie breaker" and will determine whether the employee is fit for duty. The "tie breaker" doctor is selected by the County. However, since Mr. Brinkerhoff had been previously advised by Ms. Bales-Lane that Mrs.

Moran believed he had interfered with her examination by Doctor Reed, Mr. Brinkerhoff instructed Ms. Bales-Lange to advise Mrs. Moran's attorney that in her case he would deviate from the usual practice and provide Mrs. Moran with a list of doctors from which she could choose. [See Declaration of Jim Brinkerhoff.]

Plaintiff severed her relationship with her attorney and wrote directly to County's attorney. In that letter she indicated she was not willing to proceed with her administrative remedy, and that she intended to file a separate action against the County, Jim Brinkerhoff and Robert Atwood for breach of the settlement agreement if she was not immediately reinstated. [See Exhibit F to Declaration of Kathleen Bales-Lange.]

LEGAL AUTHORITY

I.

MEDICAL SAFETY TO WORK IS A REASONABLY IMPLIED CONDITION OF REINSTATEMENT TO EMPLOYMENT.

A settlement agreement is essentially a contract. Under California law, those terms which are necessary to make a contract reasonable, or are necessary to carry it into effect, are implied conditions. [Labor Code sections 1655, 1656]

All employers in California are required by statute to provide employment for employees which is free from danger to the life, safety or health of those employees [Labor Code section 6306 subdivision (a)]. Further, under common law, an employer has a duty to furnish an

employee with a reasonably safe work place in which to work. [*Devins v. Goldberg* (1948) 33 Cal.2d 173]

Since all employers are legally required to ensure their employees are provided employment which is medically safe, it is a reasonably implied condition of the agreement to reinstate Plaintiff that it be medically safe that she be reinstated.

II.

THE COUNTY HAS NOT BREACHED THE SETTLEMENT AGREEMENT.

Assuming that medical safety is an implied condition of the settlement agreement with Plaintiff, County has not breached the agreement. Plaintiff left work due to a psychological condition. When she requested to be reinstated, she presented a brief evaluation from a general practitioner clearing her to return. County exercised its legal duty to ensure that Plaintiff could safely return to work, and had her examined for fitness for duty by a licensed psychologist. That psychologist determined that she was not fit for duty. Plaintiff has refused to exercise her appeal right to a third opinion from a "tie breaker" physician.

County has done all it is reasonably required to do pursuant to the agreement and its implied conditions. County should not be threatened with lawsuits for its actions.

III.

THE COUNTY IS ENTITLED TO A FINDING FROM THE COURT THAT IT HAS COMPLIED WITH THE SETTLEMENT AGREEMENT.

The County and its attorneys regret having to bring this to the court's attention and consume the court's time with this matter. However, the County's attempts to resolve this matter informally have been unsuccessful, and the County must request the protection of the court to avoid even more costly and senseless litigation by Plaintiff.

The County has attempted in good faith to comply with all terms of the settlement agreement. In return County staff have been accused by Plaintiff of conspiring to falsify information to make an example of Plaintiff, and County taxpayers are threatened with yet another lawsuit.

This court retains jurisdiction over this settlement. We request that this court find that the County has complied with the terms of the settlement, with the exception of the implementation of the bilingual services plan. In the unlikely event that the court finds that the County is in breach of the agreement, we request that the court reinstate Plaintiff's action. Since the County has already paid Plaintiff pursuant to the agreement, we further request judgment in our favor against Plaintiff in the amount paid, twenty five thousand dollars, plus interest. County contends that this court has this inherent power, and further that this power exists pursuant to Federal Rule of Civil Procedure Rule 54 subdivision (c).

CONCLUSION

For the foregoing reasons, County requests that this court find that County has complied with the settlement agreement.

Dated: 4-4-95

Respectfully submitted,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

Attorneys for COUNTY

County of Tulare *Personnel*

DEPARTMENT

December 19, 1994

Lydia M. Moran
1270 N. Laspina
Tulare, CA 93274

SUBJECT: Your letter of December 8, 1994 (Received December 12, 1994)

I have read and considered your letter, reviewed the attached documentation and discussed your situation with Employee Relations and Risk Management staff. I can understand your reaction to the emphasized statement *"directly ordered"*. The strong emphasis on this statement is not intended to imply any lack of cooperation on your part. We have had to add that emphasis as a standard practice because of past problems with others. We just want to clearly communicate and to make sure the importance of this appointment is emphasized.

A fitness for duty evaluation is standard practice under the circumstances of your return. Its purpose is to insure that you are indeed able to perform the core duties of the job and that doing so will not jeopardize your health and further recovery. As soon as that has been confirmed we will begin certifying you to departments for consideration for reinstatement.

We regret that this process is time consuming, but it is necessary. I have directed staff to expedite the process to ensure a response to you at the earliest possible date.

Sincerely,

/s/ Jim Brinkerhoff
Jim Brinkerhoff
Personnel Director

cc: Thomas F. Campanella
Vern Ribeiro
Kathy Bales-Lange

LYDIA MARY MORAN
1270 NORTH LASPINA
TULARE, CA 93274
Telephone (209) 685-8430

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff v. TULARE, COUNTY OF DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC PLAINTIFF RESPONDS TO MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION [FRCP 54 (C)] Date: May 1, 1995 Time: 10:00 a.m. Courtroom:

Comes now plaintiff, Lydia Mary Moran in pro per:

1. Plaintiff LYDIA MORAN [hereinafter "plaintiff] and Defendant COUNTY OF TULARE [hereinafter "County"] entered into a Settlement Agreement dictated into the record and approved by Magistrate Judge Dennis L. Beck on June 10, 1994.

2. Thereafter, said Settlement Agreement was formally reduced to writing and agreed to by both parties. A true copy of said written Settlement Agreement along with global Workers' Compensation claim is attached as Exhibit A to the Declaration of Kathleen Bales-Lange,

submitted with original motion. Magistrate Judge Beck retains jurisdiction over the Settlement Agreement until such time as the bilingual services plan has been implemented.

3. COUNTY contends that it has complied with the terms of settlement agreement as follows:

A. COUNTY has paid PLAINTIFF the amounts due and owing under paragraph 1 of the Agreement. [See Declaration of Pamela J. Rutherford, Declaration of Travis Stegall, both with the original Motion.

B. COUNTY alleges to have commenced preparation of a bilingual services policy as required by paragraph 2 of said Agreement. Said policy is allegedly scheduled to be completed on or before June 10, 1995. [See Declaration of John Rodriguez, submitted with original Motion. PLAINTIFF has requested signed documents of ALL COUNTY employees who took Language Survey between July 3, 1994 and July 16, 1994 to confirm truthfulness of Mr. Rodriguez's Declaration.]

4. In November of 1994, PLAINTIFF requested reinstatement to her employment pursuant to paragraph 9 of said Settlement Agreement. In support of this request, PLAINTIFF submitted a statement from Doctor Miyakawa stating she could return to duty, [See attached medical release from Doctor dated November 7, 1994]

5. PLAINTIFF was ordered to undergo a fitness for duty examination conducted by Bruce T. Reed, a psychologist licensed to practice in the State of California. Dr. Reed subsequently rendered a subjective opinon [sic] that PLAINTIFF was not fit for duty due to her psychological

condition. A true copy of Dr. Reed's report is attached as Exhibit B to the Declaration of Vernon Ribeiro supporting the original Motion. PLAINTIFF is requesting that all the test material that she was administered by Dr. Reed be provided to the court for review.

6. PLAINTIFF has refused to use the administrative appeal system utilized by the COUNTY to resolve a dispute between two doctors regarding an employees fitness for duty because this was not part of the Settlement Agreement.

7. COUNTY contends that a reasonably implied condition of Settlement Agreement insofar as it related to PLAINTIFF'S reinstatement is that PLAINTIFF be medically able to safely perform the duties of her employment.

8. PLAINTIFF contends that such a condition is not a condition of the Settlement Agreement, and further contends that COUNTY has breached said AGREEMENT by refusing to reinstate PLAINTIFF unless and until PLAINTIFF is found fit for duty. [See Exhibit F to Declaration of Kathleen Bales-Lange]

9. COUNTY has attempted to resolve said dispute informally with PLAINTIFF and has been unsuccessful to date due to COUNTY'S insistence on reinstatement procedures not agreed to in the original Settlement Agreement of June 10, 1994.

WHEREFORE, PLAINTIFF requests as follows:

1. That this court find that COUNTY has not complied with terms of the Settlement Agreement regarding reinstatement to the date this Motion is heard.

2. If the court finds that COUNTY is in breach of the Settlement Agreement, that this court issue the following orders:

a. PLAINTIFF is entitled to a judgement in the amount of seven hundred fifty thousand dollars in damages for retaliation and harassment against COUNTY and for their "expert doctor" (Doctor Reed's subjective opinion) which has seriously damaged my future employment opportunities.

3. For such other remedy as the court deems just and proper in the premises.

Dated: 4-19-95

Respectfully submitted,

By /s/ Lydia Mary Moran
Lydia Mary Moran
In pro per

Supreme Court, U.S.
FILED
JUL 18 1997
CLERK

No. 97-118

In The

Supreme Court of the United States

October Term, 1996

TULARE COUNTY DEPARTMENT OF HEALTH SERVICES,

Petitioner,

vs.

LYDIA MARY MORAN,

Respondent.

On Petition For Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

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OR CALL COLLECT (402) 342-2831

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Bruce T. Reed, Ph.D.

Licensed Psychologist
PSY 9324

DATE OF EVALUATION: 12/14/94 & 01/06/95

PATIENT: LYDIA M. MORAN
DOB: 05/24/39

REFERRAL SOURCE: Vern Ribeiro
Employee Relations Specialist
Tulare County-Personnel Department

IDENTIFICATION:

Lydia Moran is a 55 year old married female referred by Tulare County for a psychological fitness for duty evaluation. Mrs. Moran was initially seen on 12/14/94; on this date she completed approximately 2 hours of face-to-face evaluation and completed objective personality testing which took approximately 2 hours to complete. She was next seen on 01/06/95 and underwent approximately 1¼ hours of combined evaluation and cognitive-intellectual assessment. Mrs. Moran understood the nature of this referral and that a report would be forwarded to Tulare County-Personnel Department. She chose to participate with these scheduled appointments. The purpose of these scheduled appointments was for a report which dealt with psychological fitness for duty.

RECORDS REVIEWED:

The following records were received from Fimbres Adjustors, Inc./Fresno and reviewed prior to the first appointment: Ronald J. Lowell, M.D. reports dated 12/10/93 and 01/02/94, Margarita Prado-Borrego, Ph.D. letter dated 09/30/93, and S. A. Manohara, M.D. report dated 07/02/93.

Mrs. Moran also provided several documents for review: Letter to Jim Brinkerhoff/Personnel Director from Lydia Moran dated 12/08/94, Letter to Lydia Moran from Vern Ribeiro/Employee Relations Specialist dated 12/07/94 and Return-to-Work Release from Attending Physician J. Miyakawa dated 11/07/94.

BRIEF BACKGROUND AND HISTORY:

Mrs. Moran is the second of three daughters born to and raised by, natural parents in Hanford, CA. Her parents were of Mexican background. The family grew up on the farm her father operated in the Hanford area.

Family life was described as stable and not characterized as abusive in any fashion. Both parents had been described in positive terms; father was strict and did not allow her to date until she was 18 years old.

She attended the public school system in Kings County and dropped out after the 10th grade due to the logistics difficulties related to attending school and living in the country. Concerns were noted in the records when she described being made fun of for speaking Spanish while in school and this, in conjunction with being shy, also contributed to her decision to drop out. She worked on

the farm and later attended a beauty college when she was approximately 19 years old. She also worked for other people in the county area. In addition to beauty college she completed her high school education (1980) after her marriage; she has also taken classes at College of Sequoias.

After she left the family home at 24 years of age the family farm operation suffered financial setbacks; the farm was sold and her parents moved to the Los Gatos area. While in Los Gatos both parents became gainfully employed. At 57 years of age mother died in 1973 due to leukemia. At 77 years of age father became a resident of a nursing home due to the effects from a stroke.

No family history of mental/nervous disorder was noted. Mrs. Moran did not have a history of contact with either juvenile or adult law enforcement authorities.

After completing beauty college she worked in that chosen field until she married. Following marriage she worked on a part-time basis. In 1976 she became self-employed in worked [sic] as a hair-dresser until 1985. In 1985 she began employment with Tulare County.

She remains in her fist marriage; they are the natural parents to four children (two sons; two daughters).

HISTORY OF INDUSTRIAL INJURY/PRECIPITATING CIRCUMSTANCES (According to Records Forwarded and Respondent's Self-Report):

After being hired by Tulare County in 1985 Mrs. Moran worked as an Office Assistant in the Department of

Health Services. This assignment lasted from approximately 1985-1989 and was reported to be performed well and without difficulties. She also performed Office Assistant duties in the Fiscal Department, as well. This, too, was reported to be performed well and without difficulties.

In late 1989 she transferred to California Children Services and assumed an acting position as an Office Assistant III. She worked in this capacity until she was transferred out of the department in May 1990.

Her assignment in the California Children Services department was experienced as stressful and contributed to her subjective complaints and psychological impairment. The supervisor informed her that she would work for a six month block of time in the acting position. She was to supervise two Office Assistant II's, one of whom was bilingual.

After three months the two experienced Office Assistant II's transferred. They were replaced by temporary workers; Mrs. Moran was the only bilingual person in her section. Some of the temporary workers needed a lot of assistance in their work since they were either non-fluent in Spanish or had insufficient command of Spanish. Mrs. Moran began to experience tension, exhaustion and frustration with the work load she was handling. Eventually a permanent employee was hired to assist in the department; however, she was neither bilingual nor computer literate.

Mrs. Moran continued to have conversations with her supervisor over the work load; she also spoke with her supervisor's supervisor. Eventually, Mrs. Moran's acting

position was evaluated and negative comments of her performance were noted; she was taken by surprise in that she had no advance notice of adverse comments and had not been counseled by her supervisor. It was also reported that her supervisor had made discriminatory comments that offended Mrs. Moran.

Mrs. Moran met with her supervisor's supervisor and her performance evaluation was slightly changed for the better. Mrs. Moran then perceived retaliation from her own supervisor since disciplinary action was mentioned if she could not improve her performance. A discussion was held with the Director of her department; this was initially positive but later perceived to become a negative set of interactions.

It was determined that Mrs. Moran was to continue to work in her acting position; Mrs. Moran was concerned about the continuing assignment.

Mrs. Moran developed anxious, worried and depressed feelings. She was seen by her primary care physician, Dr. Miyakawa, and was placed on one week of stress-sick leave. She communicated her continuing concerns to the Personnel Department; she was advised to seek counseling. She saw a psychologist on two occasions and then returned to work.

Upon returning to work she was directed to continue to work with the supervisor; the promotion had been denied and the threat of disciplinary action was suspended. Close supervision was to be routine. Later, while discussing a case with another employee Mrs. Moran's supervisor made a negative comment that offended Mrs.

Moran. She reacted to this exchange and submitted her resignation, effective 05/18/90.

Several days prior to the resignation she was given a lateral transfer to the Department of Social Services as an Office Assistant II. She accepted the assignment and worked until she became ill in June 1992. She also began seeing a social worker for therapy during this timeframe (approximately one year of treatment) in order to address her concerns over what had created the severe stress. She believed she performed well in the Office Assistant II position. During this assignment she attended a training session which dealt with interpersonal relations; as a result of this training she concluded she had been involved in a discriminatory situation while in the acting Office Assistant III position. She dropped out of treatment and sought to deal with her situation in another fashion.

When no result came from her talks with the Personnel Office Mrs. Moran filed an EEOC complaint in November 1990; she also filed a complaint with the Department of Fair Housing and Employment. The EEO complaint did not find in her favor. A stress claim was also filed.

Mrs. Moran was seen in consultation with Ms. Prado-Borrego, LCSW on 05/16/90. Symptoms consistent with a diagnosis of Major Depression were noted at that time. The last treatment contact was on 09/07/93. Mrs. Moran discontinued treatment despite Ms. Prado-Borrego's guidance that she continue in psychotherapy intervention. "She reportedly fails to understand how psychotherapy will influence her progress. She continues to

manifest symptoms consistent with depression." According to Ms. Prado-Borrego " . . . she continues to victimize herself. Ms. Moran appears to be resistant and defensive to confront her emotional issues. Her underlying psychological issues tend to aggravate her "stress." " At the time of this particular correspondence Mrs. Moran had agreed to contract Ms. Prado-Borrego if she changed her mind about treatment.

She continued to experience dysphoric symptoms. Dr. Miyakawa referred her to the Sansum Clinic; their evaluation suggested stress related symptom development. A psychiatrist diagnosed Involutional Dysthymia (10/17/91).

During mid-May 1992 she began to ruminate and obsess over what she believed was a discrimination problem. She also began to experience physical problems such as chest pain and difficulty breathing. She returned to Dr. Miyakawa; medications and rest were prescribed. Temporary improvement occurred but then she developed severe chest pain. She was taken to the hospital and admitted to Tulare District Hospital for ten days during June 1992. She did not return to work. She applied for, and received, state disability for a period of time.

On 07/16/92 Mrs. Moran began seeing a psychiatrist, Dr. Maloof. Anxiety, depression and psychophysiological disturbances were noted. By 08/31/92 she was noted [sic] be quite suspicious and, at times, irrational over her difficulties with Tulare County; it was believed she was grossly psychotic and acute psychiatric hospitalization

was recommended. On 10/19/92 she was seen as scattered, tangential, demonstrated significant thought disorder-suspiciousness-paranoid delusions. He diagnosed Major Depressive Disorder with Psychotic Features and Psychological Factors Affecting Physical Condition. Industrial causation was noted. Temporary total disability was noted to have begun effective 06/19/92. She was seen again on 11/24/92 and her mood and though [sic] processes were dysfunctional; insight and judgement were poor. She had determined she didn't need medications even though they had been prescribed by the physician. It was noted that she had not taken prescribed medications, had not entered the hospital as recommended and had not pursued out-patient psychotherapy. It was reported that he did not envision her returning to gainful employment. If she had entered treatment he wanted to re-evaluate her. It was reported that he terminated his care of her since she refused hospitalization.

A personality assessment by A. Shonkoff, Ph.D. (report dated 04/08/93) indicated tension and no clinically significant levels of anxiety or depression; histrionic and dependent personality characteristics were noted.

It was reported that a psychiatric evaluation was performed by Andrew Whyman, M.D. (report dated 05/17/93); he diagnosed Depression NOS, Largely Remitted and Histrionic-Dependent Personality. Her past Major Depressive Disorder with Psychotic Features was noted. The complexity of the case, with regard to her psychological defenses of denial and repression, was noted. It was reported that this physician believed that she had been raised in a " . . . stable, small social community." Limitations in her ability to deal with issues in large work

environments were noted. He had noted the presence of a psychiatric injury; no previous disability was noted. Residual anger toward the employer was noted and this was believed to likely pose a mild impact on work relations. Dr. Whyman believed she was capable of returning to employment; whether she would resume work was considered an open question. Continuing litigation was noted; no further therapy was recommended by Dr. Whyman.

Dr. Manohara performed a psychiatric evaluation on 07/02/93; he diagnosed Major Depression, Single Episode, Severe, Without Psychotic Features and Generalized Anxiety Disorder. She was determined to be temporarily totally disabled from June 1992 through the time of the evaluation. Industrial causation was noted " . . . although personality features might have predisposed to being vulnerable to this type of injury." Intensive psychiatric treatment and medication were recommended. It was noted that, "With appropriate treatment, there is a good chance she will be able to go back to work in a similar setting. It appears that she has not had a fair trial of psychiatric treatment as yet."

Mrs. Moran had consulted intermittently with her primary care provider, Dr. J. Miyakawa, and he had prescribed a course of Xanax (she does not currently use this medication).

At some point during 1993 Mrs. Moran began receiving SSI due to her psychiatric disability.

Dr. Lowell's initial examination on 12/10/93 revealed an anxious and tearful person who displayed periods of agitation " . . . and frequently made some angry remarks

about what had occurred to her, believing she was victimized by discrimination." Mood noted to be "despondent without major depression." Thought processes were of "normal speed and free of any underlying pathology." She did not appear to be hostile, argumentative or manipulative. He noted that " . . . there was some suggestion of passive-aggressive traits." Industrial causation was noted. Issues of disability were deferred pending receipt of medical records. He suspected " . . . that there must be considerable secondary gain which is present." This was in reference to issues involving litigation. She did not present to him as a malingerer. His preliminary impression was that she was " . . . temporarily partially disabled by a depressive disorder . . . "

Dr. Lowell's supplemental report on 01/02/94 indicated that Mrs. Moran had a psychological injury " . . . by events which unfolded in her employment with Tulare County." She had " . . . developed a depressive disorder which at one point reached the magnitude of a Major Depression With Psychotic Features." Substantial improvement was noted over the course of time she [sic] that she was away from the work environment. He noted that she had received "some psychological and psychiatric treatment." She was determined to be Permanent and Stationary and rateable as of 09/07/93. Permanent psychiatric impairment was noted. He noted that she was not interested in additional psychological or psychiatric treatment; he did not recommend further treatment at this time. He noted that "I do not believe Ms. Moran is able to return to employment for Tulare County. To do so would only reactivate traumatic memories and she would soon be more symptomatic on a psychiatric basis and unable to

continue her employment." He did " . . . not find her to be a likely candidate for vocational rehabilitation services however." He stated that "I believe she will continue to be resistive to any kind of psychiatric or psychological care and will also be resistive to vocational rehabilitation services."

Mrs. Moran stated that during early-1994 she received a settlement for her psychiatric disability. She stated that she was rated as 28% disabled based upon psychiatric factors.

J. Miyakawa, M.D. indicated that Lydia Moran could return to work as of 12/01/94. His diagnosis was Situation Anxiety/Stress Related Disorder.

CURRENT CIRCUMSTANCES:

Mrs. Moran remains in an intact marriage; husband is retired. She seeks to return to work for Tulare County. She stated that upon her return to work for the County that she wants a policy change with regard to grievance policy issues; she also stated that she wants the County to initiate workshops for staff so that they can be better informed of issues relating to discrimination and stress. She has recently (12/08/94) initiated correspondence with the Personnel Director and expressed her concern over the wording of the letter sent to her by the Personnel Department which directed her to attend this present evaluation.

TESTS ADMINISTRATED:

Mental Status Examination
Cognitive Capacity Screening Examination
Wechsler Adult Intelligence Scale-Revised (WAIS-R)
Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
Inwald Survey 5 (IS5)

TEST RESULTS:

Mental Status Examination:

Mental status examination revealed an alert, oriented woman who appeared her stated age and was in no acute distress. The sensorium was clear and her cognitive functions appeared to be grossly intact. Her cooperation varied: (a) during the interview and background/history section she appeared motivated to discuss at great length the stress issues, discriminatory actions and subsequent case factors that led up to this point in time but, (b) she was critical of, and frustrated with, the interactive testing process (e.g., cognitive and intellectual assessment), (c) at times began to give answers without listening to the full extent of the questions and (d) either made excuses as to why she couldn't proceed or refused to proceed with portions of the test protocol. When allegedly unable to perform portions of interactive testing she stated she tended to 'day-dream', she couldn't see correctly due to colors of some of the stimulus items in conjunction with poor vision and her failed performance was rationalized as something that " . . . not many others could do, either." Speech production was generally appropriate during inquiry and her choice and usage of words were consistent with her level of education. During portions of interactive testing her speech was slightly pressured and

rapid. Mood was described as normal and consistent; affect was constricted and slightly anxious. She denied suicidal and homicidal ideations. There was no evidence suggestive of overt psychopathology or gross cerebral dysfunction. Insight and judgement were poor and fair, respectively.

Cognitive Capacity Screening Examination:

She was oriented and alert for this examination. General orientation questions were answered appropriately and accurately. During digit recall she initiated her responses before the stimulus question was completed. As the complexity of the questions increased very slightly she began to answer incorrectly since she did not listen. Abstract reasoning skills noted to be grossly intact. When asked to perform a subtraction task (measuring basic calculation ability and attention/concentration) she performed one calculation and then refused to do any more.

Wechsler Adult Intelligence Scale-Revised (WAIS-R):

A pro-rated Full-Scale IQ score of 93 (Average) was obtained; prorated Verbal and Performance Scales were 87 (Low Average) and 107 (Average), respectively. Given Mrs. Moran's general approach to this test, in conjunction with her level of emotional functioning, these scores are probably a slight underestimation of her actual level of intellectual ability.

Review of the verbal-comprehension factor revealed the following. Low average score noted for long-term verbal

memory retrieval involving general knowledge of important dates and facts. Low average score noted for verbal abstract reasoning and social awareness/judgement (e.g., ability to understand everyday situations; practical judgement in everyday social situations). Average score for concept formation/associative ability and categorizing abilities. Assessment of word meanings was not administered.

Review of the attention/concentration factor revealed the following. Low average score was noted for immediate auditory recall/memory capacity and translating a word problem into arithmetic operations/ability to utilize abstract concepts of numbers and numerical operations.

Review of the perceptual organization factor revealed the following. Average score for long term visual memory retrieval (familiarity with common objects). Low average scores noted for visual spatial perceptual abilities (recognition of cause and effect relationships; judgement; planning and anticipation), part-to-whole/behavioral planning/problem solving (reproduction of abstract designs; visual-motor coordination; visual organization).

Average score was noted for visual associative memory in conjunction with motor speed and rote learning.

Overall, Mrs. Moran's cognitive functioning and efficiency were reduced due to emotional/behavioral factors.

Minnesota Multiphasic Personality Inventory-2:

This test was initially administered on 12/14/94. Since she omitted answering sixteen items the initial profile was of marginal validity. During the next scheduled

appointment the undersigned queried her with regard to these omissions in order to determine her reasons for non-compliance with the test instructions.

On 01/06/95 Mrs. Moran completed the omitted items and the profile continued to have marginal validity. She attempted to place herself in an overly positive light; this was done by minimizing faults and denying psychological problems.

This particular profile was determined to be an underestimation of her current level of psychological functioning. Similarly scoring individuals tend to have little awareness of their difficulties. They are likely to be rigid and inflexible in their problem solving approach. They tend to project an excessively positive image; they tend to be somewhat arrogant and intolerant of others' failings. Similarly scoring individuals are unlikely to seek psychological treatment or to cooperate fully with treatment when imposed on them. Due to her level of defensiveness, as reflected in the elevated K scale, the content scores were under representative of her actual level of problems.

Few psychological symptoms were reported. The overall MMPI-2 profile was within what is considered the 'normal range' and this suggested that she tends to view her present level of problems as minimal. Some personality features were noted, such as being self-centered, immature and proneness to respond to conflict physiologically. This latter trait reflects a tendency to develop physical symptoms under stress.

Sex-role identity is not limited to traditional feminine patterns and she reported no sex-role conflicts.

She presented herself as quite outgoing and sociable; she has a strong need to be around others. She is gregarious and enjoys interpersonal attention.

Possibly stable (i.e., consistent), the profile type suggests that hysteroid personality features are present.

Inwald Survey 5 (IS5):

The IS5 aids in the identification of individual characteristics and behavior patterns in a variety of settings.

Compared with others tested she tended to be candid in her responses. She was willing to admit to minor faults and presented a realistic picture of herself.

Compared with others tested, she did not endorse items suggesting serious difficulties in the area of conscientiousness/reliability. There is a low risk for lack of conscientiousness/reliability.

Item endorsements indicated that she scored in the top 2% with regard to lack of work ethic. This score indicated a high risk for issues related to lack of work ethic. This factor is related to lack of sensitivity (e.g., may not be aware of, or concerned with, how her behavior is being judged, or responded to, by others), lack of competitive motivation (e.g., traits related to disliking individual evaluations, avoidance of direct competition with others) and work effort concerns (e.g., not overly driven to complete all projects or to meet all deadlines; may not feel the need to put in extra hours to accomplish tasks more quickly).

She scored in the average to above average range in scales measuring social initiative. It did not appear that

she had significant difficulties interacting with others. This suggested a low risk for lack of social initiative.

DIAGNOSIS:

Axis I	Depressive Disorder NOS, In Partial Remission
	Major Depression With Psychotic Features, Resolved, By History
	Noncompliance with Medical Treatment, By History
Axis II	Histrionic, Dependent and Passive-Aggressive Personality Disorder Traits

RECOMMENDATIONS:

1. Lydia M. Moran is not psychologically fit for return to full duty as an Office Assistant for Tulare County at this time.

2. The reasons contributing to this "unfitness" have the potential to be treated to the point where "fitness" could possibly be expected.

3. Individual psychotherapy is very strongly recommended to be conducted regularly over a 6-month period (minimum). This treatment should include medication referral should the treating provider deem it necessary. Following a successfully completed course of treatment re-evaluation is recommended.

4. It is noted that Mrs. Moran was non-compliant with medical and mental health treatment issues throughout the course of her difficulties; adhering to a structured format in treatment rather than allowing her to dictate

her own treatment program (or lack, thereof) would increase the chances for a more positive outcome.

5. It was reported that Mrs. Moran's initial treating psychiatrist, Dr. Maloof, did not envision her return to gainful employment again. It was noteworthy that the first Qualified Medical Examiner/Psychiatrist, Dr. Manohara, believed there was a chance that she would be able to return to work in a "similar setting." When the next Qualified Medical Examiner/Psychiatrist, Dr. Lowell, evaluated her he concluded that he did " . . . not believe Ms. Moran is able to return to employment for Tulare County. To do so would only reactivate traumatic memories and she would soon be more symptomatic on a psychiatric basis and unable to continue her employment." Due to a lack of involvement in effective psychotherapy intervention and avoidance of prescribed medication regimens (both non-compliance issues) Mrs. Moran has not dealt with the underlying causes of her mental health and stress issues related to her industrial injury(ies) and subsequent psychiatric disability. She has achieved a sense of closure by virtue of the fact that litigation was settled in her favor yet the issues related to pre-existing, earlier life development and the vulnerability to develop this condition (e.g., stress reactions, depression, etc) were noted by previous examiners and continue to be untreated. Mrs. Moran's current reactions and responses to correspondence from the Personnel Department are consistent with the expressed concerns of Dr. Lowell, particularly the issues related to reactivation of traumatic memories. Overall, Mrs. Moran's behavior, quality of responses during objective and interactive psychological testing (particularly attention-concentration

issues) and overall clinical results from this present evaluation, in conjunction with results from previous examiners/treating providers, indicated that she is not psychologically fit for duty as an Office Assistant in Tulare County employment at this time.

6. This report contains privileged and confidential information. It was prepared solely to assist in determining this individual's psychological fitness for duty. Psychological harm may occur when a person reads, and possibly misinterprets, statements made about him/her in a psychological report. Therefore, this report and it's [sic] contents should be reviewed with this person only for a very specific purpose and with utmost caution. For these same reasons this report should not be distributed and/or released to this individual or her relatives.

/s/ Bruce T. Reed, Ph.D.
Bruce T. Reed, Ph.D.
Licensed Psychologist
PSY 9324

BTR:cmr

Original to file; 2-page summary letter sent to referral source

County Counsel
of the
County of Tulare

[LOGO]

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April 27, 1995

Hon. Dennis L. Beck
United States District Court
1130 O Street
Fresno, CA 93721

Re: *Moran v. Tulare County*
CV F 94-5694-REC

Dear Magistrate Beck:

Enclosed is a copy of Doctor Reed's Evaluation of Lydia Moran. Please take note of page 12. For this reason I am not sending a copy to Mrs. Moran. I will leave it up to the Court's discretion whether Mrs. Moran should have a copy.

If you have any questions, please give me a call.

Very truly yours,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

cc: Lydia Moran

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Attorneys for Defendant, County of Tulare

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN, Plaintiff, v. TULARE, COUNTY OF DEPARTMENT OF HEALTH SERVICES, Defendants.	Case No. CV-F-92-5694 REC MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION [FRCP 54 (c)] Date: May 1, 1995 Time: 10:00 a.m. Courtroom: (Filed Apr. 5, 1995)

Comes now Defendant, COUNTY OF TULARE, by and through its attorneys, and moves as follows:

1. Plaintiff LYDIA MORAN [hereinafter "Plaintiff"] and Defendant COUNTY OF TULARE [hereinafter "County"] entered into a settlement agreement dictated into the record and approved by Magistrate Judge Dennis Beck on June 10, 1994.

2. Thereafter, said settlement agreement was formally reduced to writing and agreed to by both parties. A true copy of said written settlement Agreement is attached as Exhibit A to the Declaration of Kathleen Bales-Lange, submitted herewith. Magistrate Judge Beck retains jurisdiction over the settlement agreement until such time as the bilingual services plan has been implemented.

3. COUNTY contends that it has complied with the terms of the settlement agreement as follows:

A. COUNTY has paid PLAINTIFF the amounts due and owing under paragraph 1 of the Agreement. [See Declaration of Pamela J. Rutherford, Declaration of Travis Stegall, both submitted herewith.]

B. COUNTY has commenced preparation of a bilingual services policy as required by paragraph 2 of said Agreement. Said policy is scheduled to be completed on or before June 10, 1995. [See Declaration of John Rodriguez, submitted herewith.]

4. In November of 1994, PLAINTIFF requested reinstatement to her employment pursuant to paragraph 9 of said Agreement. In support of this request, PLAINTIFF submitted a statement from Dr. Miyakawa stating she could return to duty. [See Declaration of Kathleen Bales-Lange, Exhibit F.] Dr. Miyakawa is apparently a physician specializing in Family and General Practice. [See Declaration of Kathleen Bales-Lange, Exhibit G.]

5. Pursuant to COUNTY'S practice and policies, PLAINTIFF was scheduled for and underwent a fitness for duty exam conducted by Bruce T. Reed, a psychologist

licensed to practice in the State of California. [See Declarations of Jim Brinkerhoff, Vernon Ribeiro submitted herewith] Dr. Reed subsequently rendered an opinion that PLAINTIFF was not fit for duty due to her psychological condition. A true copy of Dr. Reed's report is attached as Exhibit B to the Declaration of Vernon Ribeiro and is incorporated herein as though set forth in full.

6. PLAINTIFF has refused and continues to refuse to use the administrative appeal system utilized by the county to resolve a dispute between two doctors regarding and [sic] employee's fitness for duty. [See Exhibits D, E and F attached to the Declaration of Kathleen Bales-Lange, submitted herewith.]

7. COUNTY contends that a reasonably implied condition of the Agreement insofar as it related to PLAINTIFF's reinstatement is that PLAINTIFF be medically able to safely perform the duties of her employment.

8. PLAINTIFF contends that such a condition is not a reasonably implied condition of said Agreement, and further contends that COUNTY has breached said AGREEMENT by refusing to reinstate PLAINTIFF unless and until PLAINTIFF is found fit for duty. [See Exhibit F to Declaration of Kathleen Bales-Lange, submitted herewith.]

9. COUNTY has attempted to resolve said dispute informally with PLAINTIFF and has been unsuccessful to date. [See Declaration of Kathleen Bales-Lange, submitted herewith.]

WHEREFORE, COUNTY prays as follows:

1. That this court find that COUNTY has complied with all terms of the settlement Agreement to the date this Motion is heard, with the exception of the final adoption of the Bilingual Services Plan pursuant to paragraph 2 of said Agreement, and order that County be awarded attorney's fees and costs for the prosecution of this Motion;

2. In the alternative, if the court finds that COUNTY is in breach of the Agreement, this court issue the following orders:

a. The dismissal of this action is rescinded and PLAINTIFF'S action is reinstated.

b. COUNTY is entitled to a judgement in the amount of twenty-five thousand dollars plus interest from September 15, 1994 against PLAINTIFF.

3. For such other remedy as the court deems just and proper in the premises.

Dated: 4-4-95

Respectfully submitted,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

Attorneys for COUNTY

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Attorneys for Defendant, County of Tulare

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN, Plaintiff, v. TULARE, COUNTY OF DEPARTMENT OF HEALTH SERVICES, Defendants.	Case No. CV-F-92-5694 REC DECLARATION OF KATHLEEN BALES-LANGE IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION Date: May 1, 1995 Time: 10:00 a.m. Courtroom: (Filed Apr. 5, 1995)

I, Kathleen Bales-Lange, declare as follows:

1. I am over the age of eighteen years. If called to testify as a witness I could competently testify to the matters contained herein of my own personal knowledge.

2. I am an attorney licensed to practice in the State of California and admitted to practice before this District

Court. I am a deputy of the Tulare County Counsel; my title in that office is that of Principal Attorney.

3. I am the attorney who represented Defendant Tulare County in the above entitled action.

4. On June 10, 1994, Plaintiff Lydia Moran *in propria persona* and Defendant County, appearing through this declarant, dictated onto the record and approved a settlement of the above entitled action.

5. After June 10, I drafted a settlement agreement embodying the terms which were agreed to during the court appearance of June 10. Various changes were made at Mrs. Moran's request.

6. On July 26, 1994, Mrs. Moran signed the settlement agreement.

7. On August 2, 1994, the settlement agreement signed by Mrs. Moran was approved by the Tulare County Board of Supervisors. A true copy of said settlement agreement is attached hereto as Exhibit A and incorporated herein as though set forth in full.

8. I am informed by Travis Steagall, Tulare County Risk Manager, that Mrs. Moran received a warrant in the amount of $25,000.00 in payment of the settlement agreement on or about [date]. A true copy of said warrant is attached hereto and incorporated herein as though set forth in full.

9. In November of 1994 I was advised that Mrs. Moran had presented a statement from her physician indicating that she could return to work. Robert Atwood, Employee Relations Officer, asked me if anything in the settlement agreement required Tulare County Personnel

to treat Mrs. Moran any differently than any other employee. I gave Mr. Atwood a copy of the settlement agreement.

10. Sometime after that conversation with Mr. Atwood, I was advised that the Personnel Department had scheduled Mrs. Moran for a fitness for duty examination.

11. I have been employed by the Tulare County Counsel's office since 1981, and have been assigned to the area of personnel since 1983. During that period I have personal knowledge of many employees being required to undergo fitness for duty examinations even when they had a report from their own doctor.

12. On or about January 20, 1995, I was advised by Vernon Ribeiro, Tulare County Employee Relations Specialist, that Mrs. Moran was found unfit for duty. Mr. Ribeiro advised me that he told Mrs. Moran this, and that Mrs. Moran requested a copy of Doctor Reed's report. I advised Mr. Ribeiro to check with Doctor Reed to confirm that it would not be harmful to release this report to Mrs. Moran.

13. On that same date, Mr. Ribeiro advised me he had sent the report to Mrs. Moran, having received clearance from Doctor Reed. A true copy of Doctor Reed's report is attached hereto as Exhibit C and incorporated herein as though set forth in full.

14. On or about January 20, 1995, I received a telephone message that Mrs. Moran had called me at my place of employment, and I telephoned her home. I spoke with Mrs. Moran at some length. During the conversation

I had Rachel Munoz present in my office taking down my side of the telephone conversation. The conversation included as follows:

a. Mrs. Moran stated that the fitness for duty examination was not part of the settlement agreement. I advised her that any employee who left employment for medical reasons was required to undergo such an examination prior to returning to work.

b. Mrs. Moran stated that Doctor Reed was not ethical and that he had administered suspicious tests to her. Her primary objection seemed to be that Doctor Reed had timed her during the tests. The testing she described sounded to me like the Minnesota Multiphasic Personality Inventory or something similar.

c. Mrs. Moran stated that she felt that Jim "Brinkenhoff" had somehow done something to ensure she failed the fitness for duty exam, in order to "make an example" of her.

d. Mrs. Moran stated she felt the County should use a neutral doctor.

e. Mrs. Moran stated that she was going to write a letter and bring the whole thing before Magistrate Judge Beck. I told her I had no objection to that as long as she sent me a copy of whatever she sent to Judge Beck. I also advised her that anything sent to Judge Beck would be a matter of public record.

15. On that same date I telephoned Marilyn, Magistrate Judge Beck's clerk, and left a message. Marilyn and I spoke on January 23, 1995, and I advised her of the above

and requested that I be notified if anything was sent to Magistrate Judge Beck which had not been sent to me.

16. On or about February 22, 1995, I received a telephone call from William J. Smith, of the law firm of Richtel and Smith in Fresno. Mr. Smith advised me that he was representing Mrs. Moran, and inquired about administrative remedies to appeal the finding of unfitness for duty. I advised him I would check into the mechanics of such a process and get back to him.

17. On or about February 22, 1995, I sent Mr. Smith a letter, a true copy of which is attached hereto as Exhibit D and incorporated herein as though set forth in full.

18. On or about February 27, 1995, I sent Mr. Smith a second letter, a true copy of which is attached hereto as Exhibit E and incorporated herein as though set forth in full. That letter set forth the administrative appeal process as described by Jim Brinkerhoff, Personnel Director.

19. On or about March 9, 1995, I sent Mr. Smith a third letter, a true copy of which is attached hereto as Exhibit E and incorporated herein as though set forth in full, in which I requested a response to my letter of February 27.

20. On or about March 24, 1995, I received a letter from Mrs. Moran in which she alleged breach of the settlement agreement, and indicated that the County's procedure to resolve her appeal regarding Doctor Reed's exam was "unacceptable". A true copy of Mrs. Moran's letter is attached hereto as Exhibit F and incorporated herein as though set forth in full.

21. I reviewed the yellow pages of the telephone book for Tulare County. Doctor Miyakawa is listed in the yellow pages as a family and general practice physician. A true copy of the page of the telephone book so indicating is attached hereto Exhibit G and incorporated herein as though set forth in full.

Executed this 4th day of April 1995, at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and as to those matters I believe them to be true.

/s/ Kathleen Bales-Lange
KATHLEEN BALES-LANGE

EXHIBIT A

SETTLEMENT AGREEMENT

AND

RELEASE

DATE:

PARTIES: Plaintiff and Petitioner, LYDIA MORAN.

Defendant and Respondent, COUNTY OF TULARE.

RECITALS

A. A civil action has arisen between the parties out of the events described in that certain litigation captioned *LYDIA MORAN*, Plaintiff. vs. *TULARE COUNTY, DEPARTMENT OF HEALTH SERVICES*, Defendant," Action Number CV-F-92 5694 REC, pending in the United States District Court, Eastern District of California [hereinafter referred to as "the federal civil action", and as further set forth in *LYDIA MORAN*, Plaintiff v. *TULARE COUNTY DEPARTMENT OF HEALTH SERVICES*, Defendant, Action No. 155743, now pending before the Superior Court in and for the County of Tulare [hereinafter referred to as "the state civil action"].

B. LYDIA MORAN has also filed the following Workers' Compensation proceedings and/or claims [hereinafter collectively referred to as the "Workers' Compensation Action"]:

1. FRE 0111373

2. FRE 0104913

C. In the federal civil action, LYDIA MORAN seeks, among other things, reinstatement, injunctive relief, back pay and benefits, compensatory damages, interest, attorneys' fees and costs. In this action LYDIA MORAN alleged violations of Title VII under the United States Code found 42 U.S.C. Section 2000e, as well as discrimination based on Plaintiff's age, retaliation for opposing unlawful employment practices, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence "pro se".

D. In the state civil action, LYDIA MORAN seeks, among other things, compensatory damages, damages for lost and future earnings, punitive damages, attorneys' fees, and costs. In this action LYDIA MORAN alleged violations of the state Fair Employment and Housing Act, breach of the covenant of good faith and fair dealing, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence "per se".

E. COUNTY OF TULARE has denied, and continues to deny, the allegations of both the federal and state civil actions and the nature and extent of disability and injury in the Workers' Compensation proceedings.

F. The parties now desire to compromise and terminate both the federal and state civil actions, the Workers Compensation proceedings and/or claims, and any and all claims, and to enter into releases as more particularly provided in this Agreement and to reach a full and final settlement of any and all claims arising out of or in any way concerning the matters referenced in the paragraphs below.

AGREEMENT

In consideration of the promises and consideration herein described, all of which are mutually agreed to constitute valuable consideration, it is agreed as follows:

1. Monetary Consideration:

A. COUNTY OF TULARE will pay the total sum of forty-five thousand dollars ($45,000.00) to LYDIA MORAN, as specified herein, after completion of all of the following:

1. Full execution of this Agreement;
2. Dismissal with prejudice of the federal civil action;
3. Dismissal with prejudice of the state civil action;
4. Full execution of all documents necessary to resolve all pending Workers' Compensation proceedings and/or claims and their dismissal with prejudice;
5. Full execution of a Workers' Compensation form RB107, "Declination of Rehabilitation";
6. Full execution of all other documentation necessary to bring about the purposes of this Agreement.
7. Approval of this settlement as set forth in paragraph 6 of this agreement.

B. The checks and/or warrants shall be payable as follows:

1. A total of $20,000.00 payable to LYDIA MORAN and her attorneys, LAW OFFICES OF MARCOS CAMACHO in settlement of the Workers' Compensation action.

2. An additional sum of $25,000.00 payable to LYDIA MORAN in settlement of the federal and state civil actions.

C. It is understood and agreed that the checks or warrants in the sum of $20,000.00 will be held pending final approval of the resolution of the Workers' Compensation proceedings by the Workers' Compensation Appeals Board.

D. As to the check or warrant in the sum of $25,000.00, it shall be provided to LYDIA MORAN not later than thirty days after LYDIA MORAN has executed the documents identified in Paragraph 1 subparagraph A, including all subparts, above, and the settlement of the Workers' Compensation actions has been approved by a judge with the Workers' Compensation Appeals Board.

2. Nonmonetary Consideration: As further consideration of the promises exchanged herein, the COUNTY OF TULARE promises as follows:

A. The COUNTY OF TULARE will establish a formal policy regarding the provision of bilingual translation services to members of the public, and the use of COUNTY employees to provide such services.

B. Said policy shall include, but not be limited to, the establishment of appropriate goal levels of bilingual employees for each department, based on the needs

of the department and the availability of resources other than employees, such as a translation service.

C. Said policy shall further include, but not be limited to, a provision that any employee classified as bilingual shall have same reflected in the workload assigned to that employee, and same shall be reflected in the performance appraisal of that employee.

D. The COUNTY OF TULARE will use all best efforts to put said policy in place within 1 year from June 10, 1994.

E. After said policy has been established, the COUNTY OF TULARE will provide training to employees regarding the policy.

3. Release: LYDIA MORAN hereby agrees to release and forever discharge COUNTY OF TULARE and its officers, employers, employees, independent agents, witnesses, accountants, representatives, attorneys, and all other persons acting for, under, or in concert with each party, past and present, of and from any and all claims, duties, demands, actions, agreements, causes of action, promises, obligations, damages, liabilities, loss, cost or expense, including attorneys' fees of any kind or nature, whatsoever, past or present, ascertained or unascertained, whether or not now known, suspected, or claimed, from the beginning of time, including, without limitation, any and all claims alleged and/or raised or which might be or have been alleged and/or raised by LYDIA MORAN, in the federal action or the state action, or either of them, or any other action or proceeding, any and all claims relating to past health insurance benefits, including COBRA extended health benefits, any and all claims relating to

sanctions resulting from discovery disputes before the Federal Court, any and all claims relating to any and all investigations concerning LYDIA MORAN, any and all claims or right to or for compensation, employment rights, health insurance, medical benefits, vacation pay, life and/or disability insurance, front pay, back pay, benefits and interest thereon, including any such items from and after the date of her employment with COUNTY OF TULARE, any and all claims relating in any manner to LYDIA MORAN'S employment with the COUNTY OF TULARE, the COUNTY OF TULARE HEALTH DEPARTMENT, and/or RONALD PROBASCO, Health Director of Tulare County, any and all claims relating in any manner to LYDIA MORAN'S leave from employment, any and all claims under state or federal law, any and all discrimination claims under the jurisdiction of the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission and any other state or federal agencies, any and all claims for overtime compensation, including, but not limited to, Fair Labor Standards Act claims and any and all claims relating in any manner to any and all acts, errors and/or omissions by COUNTY OF TULARE, and its officers, employers, employees, independent contractors, investigators, joint tortfeasors, trustees, agents, witnesses, accountants, representatives, attorneys, and all other persons acting for, under, or in concert with each party. The intention of both parties in executing this Agreement is that LYDIA MORAN will have no further dealings with the COUNTY OF TULARE regarding the matters which have been the subject of her state and federal lawsuits.

4. Continuing Jurisdiction: The federal court shall retain jurisdiction over the settlement in this matter to ensure that the policy referenced in paragraph 3 is in fact implemented, and that same contains the minimum requirements specified in paragraph 3. The court shall retain no other jurisdiction over the contents of the policy. Once said policy has been implemented, the court's jurisdiction over this agreement shall terminate, provided that all other terms and conditions of this Agreement have been complied with.

5. Attorneys' Fees and Costs: Each party hereto will bear their own costs and attorneys' fees in the federal civil action and the state civil action, and the Workers' Compensation action.

6. Dismissal of Action: Simultaneous with the execution of this Agreement by LYDIA MORAN, she will dismiss the state civil action with prejudice and the federal civil action with prejudice.

7. Workers' Compensation Proceeding: Any and all obligations on the part of the COUNTY OF TULARE under this Settlement Agreement and Release are contingent upon:

a. Execution by all necessary parties of a settlement agreement and release relative to the Workers' Compensation action and/or claims in a form satisfactory to the COUNTY OF TULARE.

b. Approval of the settlement agreement and release by all necessary judges and/or officers, including the Workers' Compensation Appeals Board.

c. The County of Tulare will indemnify and hold LYDIA MORAN harmless as specified in the Compromise and Releases which are attached hereto as Exhibits A and B and incorporated herein as though set forth in full.

d. Dismissal with prejudice of the Workers' Compensation proceedings and/or claims.

e. LYDIA MORAN waives any right to any past or future medical or disability benefits through Workers Compensation, to the extent permitted by law.

8. Assignment or Transfer of Claims: LYDIA MORAN represents, warrants and agrees that there has not been an assignment or transfer, or purported assignment or transfer, voluntarily, involuntarily, or by operation of law, of any claim or matter released pursuant to this Settlement Agreement and Release.

9. Leave and Reinstatement: LYDIA MORAN shall be considered to be on leave of absence without pay pursuant to Tulare County Personnel Rule 6.10.1, for a period of one year from June 10, 1994. LYDIA MORAN shall have the right of reinstatement to a vacant position of Office Assistant II with COUNTY OF TULARE until June 10, 1995. If LYDIA MORAN has not reinstated to employment on or before June 10, 1995, she shall be deemed to have resigned her employment, and her employment shall terminate on June 11, 1995. In the event that her employment is terminated pursuant to this paragraph, LYDIA MORAN hereby waives any rights to administrative appeal for dismissal for cause pursuant to Tulare County Personnel Rule 12.

10. Nature of Compensation: The consideration paid by the COUNTY OF TULARE in Paragraph 1 subparagraph (B)(2) is compensation to LYDIA MORAN as follows: seven thousand five hundred dollars ($7,500.00) is payable as back pay. The balance of seventeen thousand five hundred dollars ($17,500.00) is payable for the alleged nonbusiness tort damages claimed by LYDIA MORAN, as general damages for alleged pain and suffering and emotional distress. Said consideration is paid in full settlement of any and all claims whatsoever that LYDIA MORAN has against the COUNTY OF TULARE, and in consideration of her execution of the release and other terms specified in this Settlement Agreement and Release. LYDIA MORAN agrees to be responsible for, to pay and/or to otherwise satisfy any tax, levy, assessment, claim or matter relating in any manner to the consideration specified in Paragraph 1, or any portion thereof, should any be levied or assessed. The COUNTY OF TULARE makes no representation as to the tax consequences of the payments under this Agreement.

11. Waiver: Each party hereto expressly waives any rights or benefits available under Section 1542 of the Civil Code of the State of California which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing this Release, which if known by him must have materially effected his settlement with the debtor."

12. Final Settlement: LYDIA MORAN understands and agrees that this Settlement Agreement and Release shall act as a release of future claims that may arise from

the above-mentioned matters referenced in this Settlement Agreement and Release, including but not limited to the matters referenced in Paragraph 3, whether such claims are currently known, unknown, foreseen, or unforeseen. LYDIA MORAN understands and acknowledges the significance and consequences of the specific waiver of Section 1542 described above and hereby assumes full responsibility for any injury, loss, damage, expense, or liability that may hereafter be incurred by reason of or related to any of those matters.

LYDIA MORAN fully understands that if the facts in respect to which this Settlement Agreement and Release is executed are found hereafter to be different from facts now believed by any party described herein to be true, she expressly accepts and assumes the risks of such possible difference in facts and agrees that this Settlement Agreement and Release shall remain effective, notwithstanding such differences.

13. No Inducement: Each party declares and represents that no promises, inducements, or other agreements not expressly contained herein have been made and that this Settlement Agreement and Release contains the entire agreement between the parties and that its terms are contractual and not mere recitals.

14. Binding Effect: This Settlement Agreement and Release shall inure to the benefit of each party hereto or benefitted hereby, and any and all predecessors, successors, subsidiaries, affiliates, supervisors, representatives, heirs, assigns, agents, officers, directors, employees, and personal representatives, past, present and future.

15. Further Documents and/or Court Approval: To the extent any documents are required to be executed by any of the parties to effectuate this Settlement Agreement and Release each party hereto agrees to execute and deliver such other and further documents as may be required to carry out the terms of this Agreement. To the extent approval by any court, agency, body, entity or officer is necessary or desirable to effectuate the terms or intent of this Agreement, each party and it/her attorneys of record, each agree to execute and deliver any necessary or requested documents and to assist any and all efforts to obtain the approval.

16. Representation: Each party hereto represents and acknowledges having been represented by counsel with respect to this Settlement Agreement and Release and all matters covered by or relating to it, that such party has been fully advised with respect to all rights which are affected by this Agreement and that LYDIA MORAN has authorized and directed her attorneys to file the appropriate documents terminating the Workers' Compensation claims. No warranties or assurances of any type are made by the COUNTY OF TULARE and its agents, employees, representatives, attorneys or supervisors concerning any tax liability, obligation or other consequences to LYDIA MORAN.

17. Entire Agreement: This Settlement Agreement and Release contains the entire agreement between the parties hereto, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified or Otherwise changed in any respect, except by a writing duly executed by the party to be charged, and further that all prior oral understandings, agreements,

and writings are duly superseded hereby and are of no further force or effect. However, this Agreement is intended to embody that settlement agreement which was dictated on the record on June 10, 1994 before Magistrate Judge Beck, and shall not vary the essential terms of that dictated settlement agreement.

18. Voluntary and Knowing release: Each party executing this Settlement Agreement and Release represents that he/she has read, knows and understands the contents hereof, that he/she has executed this Settlement Agreement and Release voluntarily, that he/she has not been influenced by any person or persons, or attorney acting on behalf of any party, and that he/she understands that after signing this Settlement Agreement and Release he/she cannot proceed against any person mentioned herein whom he/she hereby releases on account of any of the matters described herein.

19. Counterpart Execution: This Agreement may be duly executed by any party in any number of counterparts, which are defined as duplicate originals, all of which taken together shall be construed as one document.

20. Headings: Paragraph numbers and headings are used herein for convenience only and shall have no force or effect in the interpretation or construction of this Agreement.

21. No Admission: Each party hereto acknowledges that this Settlement Agreement and Release is the compromise of disputed or doubtful claims and that any payment hereunder is not to be construed as an admission of liability or misfeasance, or breach of any duty or

obligation on the part of any party. This Settlement Agreement and Release is intended solely to eliminate further disputes and litigation between the parties.

Dated: 7-26-94

/s/ Lydia Moran
LYDIA MORAN
In propria persona

I warrant that I have reviewed this Settlement Agreement and Release with my client, LYDIA MORAN, and I am confident that she understands the terms and effects of same; that she is entering this Agreement freely and voluntarily and that she is competent to execute this Agreement.

Dated: 7/26/94

LAW OFFICES OF MARCOS CAMACHO

By /s/ Marcos Camacho
Marcos Camacho

[seal]

COUNTY OF TULARE

/s/ James E. Maples
JAMES E. MAPLES
CHAIRMAN OF THE
BOARD OF
SUPERVISORS

ATTEST: LOUIS J. FERNANDEZ
COUNTY ADMINISTRATIVE OFFICER/
CLERK BOARD OF SUPERVISORS

By: /s/ Janice McFarlin
Deputy

APPROVED AS TO FORM:

Lita O'Neill Blatner
County Counsel for the
County of Tulare

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

EXHIBIT A

COMPROMISE AND RELEASE
PLEASE SEE INSTRUCTIONS ON
REVERSE OF PAGE 2 BEFORE
COMPLETING FORM

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. FRE 0111373

SOCIAL SECURITY NO. 552-52-2558

LYDIA MORAN
APPLICANT (EMPLOYEE)

COUNTY OF TULARE
CORRECT NAME OF EMPLOYER

2900 W. BURREL, VISALIA, CA 93291
ADDRESS

C/O FIMBRES ADJUSTERS, INC.
CORRECT NAME OF INSURANCE CARRIER

P.O. BOX 13159, FRESNO, CA 93793
ADDRESS

1. The injured employee claims that while employed as a CLERICAL WORKER
(OCCUPATION AT TIME OF INJURY)

on 1/1/90 – 5/18/90
(DATE OF INJURY)

at VISALIA CALIFORNIA,
(CITY) (STATE)

by the employer (s)he sustained injury arising out of and in the course of employment to PSYCHE, AS

FULLY SET FORTH IN THE MEDICAL REPORTS OF RECORD
[STATE WHAT PARTS OF BODY WERE INJURED]

2. The parties hereby agree to settle any and all claims on account of said injury by the payment of the sum of $ 11,000.00 in addition to any sums heretofore paid by the employer or the insurer to the employee, less amounts set forth in Paragraph No. 6.

3. Upon approval of this compromise agreement by the Workers' Compensation Appeals Board of a workers' compensation judge and payment in accordance with the provisions hereof, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury. Including any and all liability of said employer and said insurance carrier and each of these to the dependents, heirs, executors, representatives, administrators or assignee of said employee.

4. Unless otherwise expressly provided herein, approval of this agreement RELEASES ANY AND ALL CLAUSE OF APPLICANTS DEPENDENTS TO DEATH BENEFITS RELATING TO INJURY OR INJURIES COVERED BY THIS COMPROMISE AGREEMENT. The parties have considered the release of these benefits in arriving at the sum in Paragraph No. 2.

5. Unless otherwise expressly ordered by a workers' compensation judge, approval of this agreement DOES NOT RELEASE ANY CLAIM APPLICANT MAY NOW OR HEREAFTER HAVE FOR REHABILITATION OR BENEFITS IN CONNECTION WITH REHABILITATION.

6. The parties represent that the following facts are true: (If facts are disputed, state what each party contends under Paragraph 10.)

DATE OF BIRTH
5/24/39

ACTUAL EARNINGS AT TIME OF INJURY
MAXIMUM

LAST DAY OFF WORK DUE TO THE INJURY
IN DISPUTE

PAYMENTS MADE BY EMPLOYER OR INSURANCE CARRIER

TEMPORARY DISABILITY INDEMNITY	WEEKLY RATE	PERIODS COVERED
-0-	-0-	-0-

PERMANENT DISABILITY INDEMNITY	TOTAL MEDICAL, AND HOSPITAL BILLS
-0-	255.00

BENEFITS CLAIMED BY INJURED EMPLOYEE

BEGINNING AND ENDING DATES OF ALL PERIODS OFF DUE TO THIS INJURY
IN DISPUTE

MEDICAL AND HOSPITAL BILLS PAID BY EMPLOYEE
NONE KNOWN

TOTAL UNPAID MEDICAL AND HOSPITAL EXPENSES TO BE PAID BY: DEF. FOR AUTHORIZED TREATMT TO DATE; OTHERWISE BY APPL.

ESTIMATED FUTURE MEDICAL EXPENSES
TO BE PAID BY: APPLICANT

THE FOLLOWING AMOUNTS ARE TO BE DEDUCTED FROM THE SETTLEMENT AMOUNT:

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

LEAVING A BALANCE OF $ 11,000.00, less approved attorney fee (See Paragraph No. 9), payable to applicant. (If payment is to be other than in a lump sum, or there is additional information, specify on separate page(s).)

7. Liens not mentioned in Paragraph No. 6 to be disposed of as follows: Defendants agree to hold the applicant harmless to the lien of Dr. Shonkoff, Dr. Borrego, and any potential lien of the EDD and Social Security. Defendant further agrees to pay, adjust, or litigate with the WCAB retaining jurisdiction.

8. For the purpose of determining the ten claim(s) filed for benefits paid pursuant to the Unemployment Insurance Code or for benefits furnished by lien claimants defined in Labor Code sec. 4900.1, the parties propose reduction of the lien claim(s) in accordance with formulas attached.

9. Applicant's (employee's) attorney requests a fee of $ 1,320.00. Amount of attorney fee previously paid, if any, $ _____.

10. Reason for Compromise, special provisions regarding rehabilitation and death benefit claims, and additional information:

SEE ADDENUM

11. It is agreed by all parties hereto that the filing of this document is the filing of an application on behalf of

the employee, and that the WCAB may in its discretion set the matter for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein, and that if hearing is held with this document used as an application the defendants shall have available to them all defenses that were available as of the date of filing of this document, and that the WCAB may thereafter either approve said Compromise Agreement and Release or disapprove the same and issue Findings and Award after hearing has been held and the matter regularly submitted for decision.

Witness the *signature hereof* this 26 day of July, 1994, at Keene

/s/ Frances Villanueva
WITNESS

/s/ Illegible
WITNESS

/s/ Lydia Moran 7/26/94
APPLICANT (EMPLOYEE) DATE
LYDIA MORAN

/s/ Marcos Camacho 7/26/94
LAW OFFICES OF MARCOS CAMACHO DATE

COUNTY OF TULARE c/o FIMBRES DATE

/s/ Javier A. Alabart
JAVIER A. ALABART, Leath & Alabart, DATE
Attorney for Defendants.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

on this ____ day of ____ AD. 19___,
before me _____

a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared

_____

known to me to be the person _____ whose name _____

subscribed to the within instrument, and acknowledged to me that ____ he ____ executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate to first above written.

_____

Notary Public in and for said County and State of California

_____

LYDIA MORAN vs. County of Tulare
c/o Fimbres Adjusters, Inc.
WCAB NO. 1 FRE 111373, FRE 104913

ADDENDUM TO
COMPROMISE & RELEASE AGREEMENT

These agreements resolve all issues of permanent and temporary disability, responsibility for past and future medical care, potential claim for retroactive vocational rehabilitation maintenance allowance benefits, apportionment, and *death* benefits.

Settlement herein is based upon the agreed Medical Examination report of Dr. Ronald Lowell dated June 2, 1994, which the DEU has rated as follows: 1.4-15-40X-22-28:2 = $15,820.00.

Although there are two claims herein, each really represents only one claim under Labor Code Section 3300.5. The amount of permanent disability herein applies to both injuries combined.

Approval of one claim is contingent upon approval of both claims herein.

There is no need for future medical care.

Labor Code Section 5313 is waived.

Proceeds hereof include interest if award is paid within thirty days from the date of approval.

/s/ Lydia Moran
LYDIA MORAN, Applicant,

/s/ Marcos Camacho
MARCOS CAMACHO,
Attorney for Applicant.

/s/ Javier A. Alabart
JAVIER A. ALABART,
Attorney for Defendants.

EXHIBIT B

COMPROMISE AND RELEASE
PLEASE SEE INSTRUCTIONS ON
REVERSE OF PAGE 2 BEFORE
COMPLETING FORM

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. FRE 0104913

SOCIAL SECURITY NO. 552-52-2558

LYDIA MORAN
APPLICANT (EMPLOYEE)

COUNTY OF TULARE
CORRECT NAME OF EMPLOYER

2900 W. BURREL, VISALIA, CA 93291
ADDRESS

C/O FIMBRES ADJUSTERS, INC.
CORRECT NAME OF INSURANCE CARRIER

P.O. BOX 13159, FRESNO, CA 93793
ADDRESS

1. The injured employee claims that while employed as a CLERICAL WORKER
(OCCUPATION AT TIME OF INJURY)

on 1/89 – 12/31/89
(DATE OF INJURY)

at VISALIA CALIFORNIA,
(CITY) (STATE)

by the employer (s)he sustained injury arising out of and in the course of employment to PSYCHE, AS

FULLY SET FORTH IN THE MEDICAL REPORTS OF RECORD
[STATE WHAT PARTS OF BODY WERE INJURED]

2. The parties hereby agree to settle any and all claims on account of said injury by the payment of the sum of $ 9,000.00 in addition to any sums heretofore paid by the employer or the insurer to the employee, less amounts set forth in Paragraph No. 6.

3. Upon approval of this compromise agreement by the Workers' Compensation Appeals Board of a workers' compensation judge and payment in accordance with the provisions hereof, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury. Including any and all liability of said employer and said insurance carrier and each of these to the dependents, heirs, executors, representatives, administrators or assignee of said employee.

4. Unless otherwise expressly provided herein, approval of this agreement RELEASES ANY AND ALL CLAUSE OF APPLICANTS DEPENDENTS TO DEATH BENEFITS RELATING TO INJURY OR INJURIES COVERED BY THIS COMPROMISE AGREEMENT. The parties have considered the release of these benefits in arriving at the sum in Paragraph No. 2.

5. Unless otherwise expressly ordered by a workers' compensation judge, approval of this agreement DOES NOT RELEASE ANY CLAIM APPLICANT MAY NOW OR HEREAFTER HAVE FOR REHABILITATION OR BENEFITS IN CONNECTION WITH REHABILITATION.

6. The parties represent that the following facts are true: (If facts are disputed, state what each party contends under Paragraph 10.)

DATE OF BIRTH
5/24/39

ACTUAL, EARNINGS AT TIME OF INJURY
MAXIMUM

LAST DAY OFF WORK DUE TO THE INJURY
IN DISPUTE

PAYMENTS MADE BY EMPLOYER OR INSURANCE CARRIER

TEMPORARY DISABILITY INDEMNITY	WEEKLY RATE	PERIODS COVERED
-0-	-0-	-0-

PERMANENT DISABILITY INDEMNITY	TOTAL MEDICAL, AND HOSPITAL BILLS
-0-	-0-

BENEFITS CLAIMED BY INJURED EMPLOYEE

BEGINNING AND ENDING DATES OF ALL PERIODS OFF DUE TO THIS INJURY
IN DISPUTE

MEDICAL AND HOSPITAL BILLS PAID BY EMPLOYEE
NONE KNOWN

TOTAL UNPAID MEDICAL AND HOSPITAL EXPENSES TO BE PAID BY: DEF. FOR AUTHORIZED TREATMT TO DATE; OTHERWISE BY APPL.

ESTIMATED FUTURE MEDICAL, EXPENSES
TO BE PAID BY: APPLICANT

THE FOLLOWING AMOUNTS ARE TO BE DEDUCTED FROM THE SETTLEMENT AMOUNT:

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

$ _____ PAYABLE TO _____

LEAVING A BALANCE OF $ 9,000.00, less approved attorney fee (See Paragraph No. 9), payable to applicant. (If payment is to be other than in a lump sum, or there is additional information, specify on separate page(s).)

7. Liens not mentioned in Paragraph No. 6 to be disposed of as follows: Defendants agree to hold the applicant harmless to the lien of Dr. Shonkoff, Dr. Borrego, and any potential lien of the EDD and Social security. Defendant further agrees to pay, adjust, or litigate with the WCAB retaining jurisdiction.

8. For the purpose of determining the ten claim(s) filed for benefits paid pursuant to the Unemployment Insurance Code or for benefits furnished by lien claimants defined in Labor Code sec. 4900.1, the parties propose reduction of the lien claim(s) in accordance with formulas attached.

9. Applicant's (employee's) attorney requests a fee of $ 1,080.00. Amount of attorney fee previously paid, if any. $ _____.

10. Reason for Compromise, special provisions regarding rehabilitation and death benefit claims, and additional information:

SEE ADDENUM

11. It is agreed by all parties hereto that the filing of this document is the filing of an application on behalf of

the employee, and that the WCAB may in its discretion set the matter for hearing as a regular application, reserving to the parties the right to put in issue any of the facts admitted herein, and that if hearing is held with this document used as an application the defendants shall have available to them all defenses that were available as of the date of filing of this document, and that the WCAB may thereafter either approve said Compromise Agreement and Release or disapprove the same and issue Findings and Award after hearing has been held and the mater regularly submitted for decision.

witness the *signature hereof* this 26 day of July, 1994, at Keene

/s/ Frances Villanueva
WITNESS

/s/ Illegible
WITNESS

/s/ Lydia Moran 7/26/94
APPLICANT (EMPLOYEE) DATE
LYDIA MORAN

/s/ Marcos Camacho 7/26/94
LAW OFFICES OF MARCOS CAMACHO DATE

COUNTY OF TULARE c/o FIMBRES DATE

/s/ Javier A. Alabart
JAVIER A. ALABART, Leath & Alabart, DATE
Attorney for Defendants.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

on this ____ day of ____ AD. 19___,
before me _____

a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared

_____

known to me to be the person _____ whose name _____

subscribed to the within instrument, and acknowledged to me that ____ he ____ executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

_____

Notary Public in and for said County and State of California

LYDIA MORAN vs. County of Tulare
c/o Fimbres Adjusters, Inc.
WCAB NO.: FRE 111373, FRE 104913

ADDENDUM TO
COMPROMISE & RELEASE AGREEMENT

These agreements resolve all issues of permanent and temporary disability, responsibility for past and future medical care, potential claim for retroactive vocational rehabilitation maintenance allowance benefits, apportionment, and *death* benefits.

Settlement herein is based upon the agreed Medical Examination report of Dr. Ronald Lowell dated June 2, 1994, which the DEU has rated as follows: 1.4-15-40X-22-28:2 = $15,820.00.

Although there are two claims herein, each really represents only one claim under Labor Code Section 3300.5. The amount of permanent disability herein applies to both injuries combined.

Approval of one claim is contingent upon approval of both claims herein.

There is no need for future medical care.

Labor Code Section 5313 is waived.

Proceeds hereof include interest if award is paid within thirty days from the date of approval.

/s/ Lydia Moran
LYDIA MORAN, Applicant,

/s/ Marcos Camacho
MARCOS CAMACHO,
Attorney for Applicant.

/s/ Javier A. Alabart
JAVIER A. ALABART,
Attorney for Defendants.

513233

PV #	PV DATE	PO #	INVOICE #	DESCRIPTION	NET AMOUNT
11795052	08-12-94		SETTLEMENT		25,000.00
				TOTAL	25,000.00

VENDOR NO. 9999

513233

WARRANT NO.

OFFICE OF AUDITOR
TULARE COUNTY
CALIFORNIA

GENERAL COUNTY
COMMERCIAL REVOLVING FUND

THIS WARRANT IS VOID SIX MONTHS AFTER ISSUE DATE

WARRANT No. 513233
11-35
1210

DATE 08-17-94

CHECK NO. 513233

AMOUNT ****$25,000.00

THE TREASURER OF TULARE COUNTY STATE OF CALIFORNIA

TWENTY FIVE THOUS & 00/100 DOLLARS

9999

WILL PAY TO OR ORDER OF LYDIA MORAN

PERSONNEL

Jimmy R. Allen

JIMMY R. ALLEN, COUNTY AUDITOR

"513233" :121000358: 14498"00510"

EXHIBIT B

EXHIBIT C

[seal] *COUNTY COUNSEL*
OF THE
COUNTY OF TULARE

2900 W. Burrel – County Civic Center – Visalia, Ca. 93291
Telephone (209) 733-6263
FAX (209) 737-4319

February 22, 1995

William J. Smith, Esq.
Richtel and Smith
2547 W. Shaw Avenue, Ste. 112
Fresno, CA 93711

RE: Lydia Moran

Dear Mr. Smith:

Enclosed you will find a copy of the letter which was sent to Vernon Ribeiro, our Employee Relations Specialist. Although Mrs. Moran says she did not receive the letter, Mr. Ribeiro advises that the letter was sent to Mrs. Moran's home. I have arranged to meet with the Personnel Director, Jim Brinkerhoff, to ascertain which administrative remedies would be available to Mrs. Moran in regard to Dr. Reed's opinion. Once we have determined what remedies are available, I will send copies of the relevant rules or policies to you.

I have also received the releases you kindly sent to us. I will arrange to have all of Mrs. Moran's personnel

records and workers' compensation records sent to you by the Personnel Department under separate cover.

Very truly yours,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

cc: Jim Brinkerhoff
Travis Steagall

BRUCE T. REED, Ph.D

Licensed Psychologist
PSY 9324

January 9, 1995

Vern Ribeiro
Employee Relations Specialist
Tulare County Personnel Department
2900 West Burrel
Visalia, CA 93291-4583

RE: LYDIA M. MORAN

SUBJ: PSYCHOLOGICAL FITNESS FOR DUTY EVALUATION

Dear Mr. Ribeiro:

Pursuant to your request I psychologically evaluated Lydia M. Moran. Mrs. Moran was initially seen on 12/14/94; she participated in approximately 2 hours of face-to-face evaluation and completed objective personality testing which took her approximately 2 hours to finish. Due to the holiday schedule an appointment on 01/06/95 was set. On 01/06/95 she completed approximately 1¼ hours of combined evaluation and cognitive-intellectual assessment. Mrs. Moran understood the nature of the referral and that a report would be forwarded to the referring party. She chose to participate with these scheduled appointments.

The purpose of these scheduled appointments was for this report only.

Mrs. Moran provided recent documents for me to review prior to the first appointment. Records from Fimbres Adjusters, Inc./Fresno were also reviewed.

In my opinion, Lydia M. Moran is not psychologically fit for return to full duty as an Office Assistant for Tulare County at this time.

The conditions contributing to this "unfitness" have the potential to be treated to the point where "fitness" could possibly be expected.

Individual psychotherapy is very strongly recommended to be conducted regularly over a 6 month period (minimum). This treatment should include medication referral should the treating provider deem it necessary. Following a successfully completed course of treatment re-evaluation is recommended.

My opinion is based upon clinical evaluation time spent with Mrs. Moran, current results of psychological tests, documents provided by Mrs. Moran and health records forwarded by Fimbres Adjusters, Inc./Fresno.

If there are any additional questions please do not hesitate to contact me at 627-9591.

Sincerely,

/s/ Bruce T. Reed, Ph.D.
Bruce T. Reed, Ph.D.
Licensed Psychologist
PSY 9324

BTR:cmr

cc: file

EXHIBIT D

[seal] *COUNTY COUNSEL*
OF THE
COUNTY OF TULARE

2900 W. Burrel – County Civic Center – Visalia, CA 93291
Telephone (209) 733-6263
FAX (209) 737-4319

February 28, 1995

William J. Smith, Esq.
Richtel and Smith
2547 W. Shaw Avenue, Ste. 112
Fresno, CA 93711

RE: Lydia Moran

Dear Mr. Smith:

Enclosed you will find a copy of Mrs. Moran's personnel file. Her workers' compensation file has been sent to storage but has been requested.

I have met with Jim Brinkerhoff to discuss what remedy is available to Mrs. Moran. Mr. Brinkerhoff reports that Mrs. Moran's situation is somewhat unusual. However, in the obverse situation [an employee's physician contends the employee is medically unable to work and the County physician contends the employee is fit for duty], Mr. Brinkerhoff reports that the Personnel Department does use a "tiebreaker doctor" system, as you suggested during our telephone conversation last week. The Personnel Department arranges an appointment with a third physician in the needed specialty, and provides that

physician with relevant records and reports. That physician's report then becomes the "tiebreaker".

Mr. Brinkerhoff advises that generally the Personnel Department arranges such appointments. However, given Mrs. Moran's stated mistrust of Mr. Brinkerhoff and her allegations of his interference with such an examination, Mr. Brinkerhoff is willing to have the Risk Management Division provide Mrs. Moran with a list of acceptable physicians and let her choose one. Mrs. Moran can make the appointment through the Workers' Compensation Coordinator, who can arrange to provide the physician selected with the necessary documents.

If this method of arranging the appointment is not acceptable to Mrs. Moran, Mr. Brinkerhoff advises that he is willing to consider any other reasonable proposal you may have.

Please note that this offer is **not** made to settle any claim that Mrs. Moran believes she may have against the County. Mr. Brinkerhoff extends this offer to Mrs. Moran simply as a County employee on leave of absence. This offer embodies existing County policy. Mr. Brinkerhoff has modified the mechanics of arranging for a third examination solely because of Mrs. Moran's expressed mistrust of him personally. Mr. Brinkerhoff wants Mrs. Moran to feel she is being treated fairly.

Please advise this office as to how Mrs. Moran wishes to proceed.

Very truly yours,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

cc: Jim Brinkerhoff
Travis Steagall

EXHIBIT E

[seal]

COUNTY COUNSEL
OF THE
COUNTY OF TULARE

2900 W. Burrel – County Civic Center – Visalia, CA 93291
Telephone (209) 733-6263
FAX (209) 737-4319

March 9, 1995

William J. Smith, Esq.
Richtel and Smith
2547 W. Shaw Avenue, Ste. 112
Fresno, CA 93711

RE: Lydia Moran

Dear Mr. Smith:

We have not received a reply to our letter to you of February 28, 1995. Please advise this office if you are representing Mrs. Moran and, if so, what response you make to the suggested solution contained in that letter. If you have decided not to represent Mrs. Moran, please advise us so that the Personnel Department may communicate with her directly.

Thank you.

Very truly yours,

LITA O'NEILL BLATNER
County Counsel

By /s/ Kathleen Bales-Lange
Kathleen Bales-Lange
Principal Attorney

cc: Jim Brinkerhoff
Travis Steagall

EXHIBIT F

Lydia Moran
1270 North Laspina
Tulare, CA 93274

March 24, 1995

Kathleen Bales-Lange
Principal Attorney
COUNTY COUNSEL OF
THE COUNTY OF TULARE
2900 W. Burrel
Visalia, CA 93291

Re: Potential Claim Against County of Tulare

Dear Ms. Bales-Lange:

As of March 23, 1995, I will be representing myself in pro per. *see attachment letter dated March 23, 1995 from William J. Smith

In response to your correspondence dated March 9, 1995, please be advised that the County's position relative to my having a neutral third party, of my choice, conduct a physical/mental examination is not acceptable.

Mr. Brinkerhoff, Personnel Director, and Bob Atwood, Employee Relations Officer are guilty of breaching the terms of the settlement agreement set before Magistrate Beck and approved by the Board of Supervisors County of Tulare, State of California. *see Settlement Agreement, dated 2nd day of August, 1994 pages 8, 11 and last page attested by Louis J. Fernandez, county Administrative Officer/Clerk Board of Supervisors.

I have a medical release signed by Doctor Miyakawa, I have taken classes (even though it was not required

under settlement agreement) in computers in preparation for reinstatement. *see attachments

Ms. Bales-Lange I have tried to meet informally with the board of supervisors and have spoken with you directly about breach Settlement Agreement and this is my position on the matter:

a. That I be reinstated immediately

b. A listing of all office assistant II positions that were open in the county since 12/94

If the above is not inacted immediately, I will file a complaint for retaliation, and harrassment [sic] for my having filed a discrimination claim against the county.

Sincerely,

/s/ Lydia Moran
Lydia Moran
In Pro Per

cc: Thomas F. Campanella,
County Administrative Officer

Attachments (6)

* * *

8. *Assignment or Transfer of Claims*: LYDIA MORAN represents, warrants and agrees that there has not been an assignment or transfer, or purported assignment or transfer, voluntarily, involuntarily, or by operation of law, of any claim or matter released pursuant to this Settlement Agreement and Release.

9. *Leave and Reinstatement*: LYDIA MORAN shall be considered to be on leave of absence without pay pursuant to Tulare County Personnel Rule 6.10.1, for a period of one year from June 10, 1994. LYDIA MORAN shall have the right of reinstatement to a vacant position of Office Assistant II with COUNTY OF TULARE until June 10, 1995. If LYDIA MORAN has not reinstated to employment on or before June 10, 1995, she shall be deemed to have resigned her employment, and her employment shall terminate on June 11, 1995. In the event that her employment is terminated pursuant to this paragraph, LYDIA MORAN hereby waives any rights to administrative appeal for dismissal for cause pursuant to Tulare County Personnel Rule 12.

10. *Nature of Compensation*: The consideration paid by the COUNTY OF TULARE in Paragraph 1 subparagraph (B)(2) is compensation to LYDIA MORAN as follows: seven thousand five hundred dollars ($7,500.00) is payable as back pay. The balance of seventeen thousand five hundred dollars ($17,500.00) is payable for the alleged nonbusiness tort damages claimed by LYDIA MORAN, as general damages for alleged pain and suffering and emotional distress. Said consideration is paid in

full settlement of any and all claims whatsoever that LYDIA MORAN has against the

* * *

attorney of record, each agree to execute and delivery any necessary or requested documents and to assist any and all efforts to obtain the approval.

16. *Representation*: Each party hereto represents and acknowledges having been represented by counsel with respect to this Settlement Agreement and Release and all matters covered by or relating to it, that such party has been fully advised with respect to all rights which are affected by this Agreement to file the appropriate documents terminating the Workers' Compensation claims. No warranties or assurances of any type are made by the COUNTY OF TULARE and its agents, employees, representatives, attorneys or supervisors concerning any tax liability, obligation or other consequences to LYDIA MORAN.

17. *Entire Agreement*: This Settlement Agreement and Release contains the entire agreement between the parties hereto, and it is expressly understood and agreed that this Agreement may not be altered, amended, modified or Otherwise changed in any respect, except by a writing duly executed by the party to be charged, and further that all prior oral understandings, agreements, and writings are duly superseded hereby and are of no further force or effect. However, this Agreement is intended to embody that settlement agreement which was dictated on the record on June 10, 1994 before Magistrate Judge Beck, and shall not vary the essential terms of that dictated settlement agreement.

18. *Voluntary and Knowing release*: Each party executing this Settlement Agreement and Release represents that

* * *

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA

* * *

IN THE MATTER OF	)	**RESOLUTION NO.**
SETTLEMENT AGREEMENT	)	**94-0972**
WITH LYDIA MORAN	)	**AGREEMENT NO.**
	)	**17486**

UPON MOTION OF SUPERVISOR HARNESS, SECONDED BY SUPERVISOR MAZE, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS AT AN OFFICIAL MEETING HELD ON THIS 2ND DAY OF AUGUST, 1994 BY THE FOLLOWING VOTE:

AYES:	SUPERVISORS SANDERS, RICHMOND, MAZE, HARNESS, AND MAPLES
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	NONE

[SEAL] ATTEST: LOUIS J. FERNANDEZ
COUNTY ADMINISTRATIVE OFFICER/CLERK
BOARD OF SUPERVISORS

BY: /s/ Linda (Magarin)
Deputy Clerk

* * * * * * * * * * *

Approved request from County Counsel to approve the Settlement Agreement with Lydia Moran vs. Tulare County Department of Health Services

RETURN TO WORK RELEASE

ATTENDING PHYSICIAN'S STATEMENT

PATIENT NAME: Lydia Moran DATE: 11/7/94

I have examined the above employee of Tulare County. I have determined the injury/illness to be:

X Workmans Compensation (Industrial Related Injury)

____ General Disability – (Not work Related)

Employee Diagnosis: situation anxiety/stress related disorder

_____

_____

****

Employee May Return To Work As Of: 12/1/94

X At present job and duties

X No further treatment required

____ Additional treatment is required, however, it will not affect performance.

____ At limited duties (explain) _____

_____

_____

Duration of limited duties _____
DATE

****

EMPLOYEE IS UNABLE TO RETURN TO WORK AS OF

_____
DATE

REASON: _____

_____

_____

/s/ J. Miyakawa, M.D. DATE 11/7/94
PHYSICIAN'S
SIGNATURE

**********EMPLOYEE NOTICE**********

THIS FORM MUST BE RETURNED TO *SAFETY* DEPARTMENT *IMMEDIATELY* FOLLOWING APPOINTMENT

Physician & Surgeon M.D. Guide

A convenient guide to Physicians and Surgeons listed by type of practice.

Family & General Practice (Cont'd)

KAWEAH SIERRA MEDICAL GROUP INC
FAMILY PRACTICE
-Care For The Entire Family-
Day Or Night Call
1700 S Court Vis 733 3415
202 West Willow 732 4181
1131 Visalia Rd Exeter 592 4462

KING JEFFREY M MD
TULARE FAMILY PRACTICE MEDICAL GROUP
BOARD CERTIFIED FAMILY PRACTICE
Day Or Night Call
922 N Cherry Tlr 686 3421

KINGS HEALTH
470 Greenfield Suite 20 Hanford 584 4455

KU[illegible]. FRIEDRICH
North Kern Medical Clinic Inc.
1425 Main Delano 805 725 0700

LE ALAN D V MD
Visalia Medical Clinic Inc.
Board Certified
Day & Night Call
5400 W Hillsdale Dr Vis 733 5222

LEMOORE HEALTH CLINIC
784 N Lemoore Av Lmr 924 7711

LESSENGER JAMES E MD
841 W Morton Av Ptrvl 781 8080

LOELIGER SCOTT MD
Porterville Family Health Center
1107 W Poplar Av Ptrvl 781 7242

LUSBY RICHARD A MD
869 W Lacey Bl Hnfrd 582 9313

MARCONI RONALD MD
Kaweah Sierra Medical Group Inc.
Board Certified Family Practice
Day Or Night Call
1700 S Court Vis 733 3415

MEIS STEPHEN R MD
Visalia Medical Clinic Inc.
Board Certified
Day & Night Call
5400 W Hillsdale Dr Vis 733 5222

MELASHENKO KENNETH W MD
Kings Health
Member American Board Family Practice
470 Greenfield Suite 20 Hanford 584 4455

MIMURA GARY H MD
General Practice
298 Vermont Av Dba 591 3333

MINERAL KING GENERAL MEDICAL CLINIC
See Ad Physicians & Surgeons
4402 W Mineral King Av
Vis 733 4534

MITTS RUSSELL T
Day & Night Call
515 W Acequia Vis 734 6701

MIYAKAWA JON Y MD
901 N Blackstone Tlr 688 1992

[illegible]RINDA MEDICAL GROUP INC
[illegible] W Morton Av Ptrvl 781 8080

[illegible]OR FREDRICK J MD
Visalia Medical Clinic Inc.
Board Certified
Day & Night Call
5400 W Hillsdale Dr Vis 733 5222

NGUYEN DEAN Q MD INC
12572 Avenue 416 Orosi 528 4779
Diplomate Of American Board Of Family Practice F.A.A.F.P.
Acupuncture
Day & Night Call

Family & General Practice (Cont'd)

PARK JOHN B MD
Comprehensive Family Health Care
Preventive Medicine
200 North G Ptrvl 781 6224

PENTSCHEV STEFAN I MD
125 Cressi Av Exeter 592 2134

PEREZ JOSEPHINE M MD
Family Practice-Surgery-Obstetrics
2400 Sierra Kingsburg 897 2963
Day Or Night Call 897 2963
If No Answer Call 891 1000

PETERSON RICHARD NILS MD
1200 Smith Kingsburg 897 5183

PITKIN PATRICIA R MD
360 W Putnam Av Ptrvl 784 1300

RAMIREZ JOSE MD
Porterville Family Health Center
Ivanhoe Family Health Center
1107 W Poplar Av Ptrvl 781 7242
From Tulare Call 688 0131

RIDER GEORGE L MD
858 N Cherry Tlr 686 8526

ROACH WILLIAM MD
Kaweah Sierra Medical Group Inc.
Board Certified-Family Practice
Day Or Night Call
1700 S Court Vis 733 3415
Ruth Edw C MD 101 N Palm Wdlk 564 8923

SAID ONSY I MD
Day & Night Call
515 W Acequia Vis 734 6701

SAMPSON RICHARD B MD
Kings Health
Member American Board Family Practice
470 Greenfield Suite 20 Hanford 584 4455

Sasaki Elizabeth M DO
Day & Night Call
708 W Center Vis 732 6414

SCHOMMER PAUL J MD
Visalia Family Practice Medical Group
Board Certified Family Practice
311 W Noble Av Vis 625 9200

Seminario Oscar R MD
1224 Jefferson Delano 805 725 3772

Shannon Gary W MD
Family Practice
403 North L Dba 591 2232

SHEPHERD M D MD
Board Certified In Family Practice
440 Greenfield Av Hnfrd 584 1871

SHERWIN CARL P MD
869 W Lacey Bl Hnfrd 582 9313

SIDHU JASVIR MD FAMILY PRACTICE
Sequoia Medical Center
590 W Putnam Av Ptrvl 784 5337
If No Answer Call 781 3700

SLAPNIK KURT J MD
Kaweah Sierra Medical Group Inc.
Board Certified Family Practice
Day Or Night Call
1700 S Court Vis 733 3415

SOLONIUK GAYLENE MD
Kings Health
Member American Board Family Practice
470 Greenfield Suite 20 Hanford 584 4455

SORENSEN ERIC N MD-A PROFESSIONAL CORP
Kings Health
Mem Amer Board Family Practice
470 Greenfield Suite 20 Hanford 584 4455

Taylor Charles E MD
114 North D Ptrvl 781 7980

Thurston Gordon L MD
216 Fresno Avnl 386 5364
If No Answer Call 935 0382

TORRES ALEX C MD FAAFP
Kaweah Sierra Medical Group Inc.
Board Certified Family Practice
Day Or Night Call
1700 S Court Vis 733 3415

TREVINO BRUCE A MD
Family Practice-Surgery-Obstetrics
Day Or Night Call
2400 Sierra Kingsburg 897 2963

TRIGLETH MICHAEL B MD
Mineral King General Medical Clinic
See Ad Und Physicians & Surgeons, M.D.
4402 W Mineral King Av
Vis 733 4534

Family & General Practice (Cont'd)

TRUJILLO JOSHUA A MD
Porterville Family Health Center
1107 W Poplar Av Ptrvl 781 7242

URRUTIA DANIEL MD
Board Certified Family Practice
355 Campus Dr Hnfrd 584 2721

VARGAS ROGER N MD
Family Practice-Surgery-Obstetrics
Day Or Night Call
2400 Sierra Kingsburg 897 2963
If No Answer Call 891 1000

VELASCO OSCAR L MD
360 W Putnam Av Ptrvl 781 4007

VISALIA FAMILY PRACTICE MEDICAL GROUP
311 W Noble Av Vis 625 9200
New Patients Call 625 9202

WADHWANI SUNEEL H MD
DIPLOMATE
American Board of Family Practice
784-5755
ADULT MEDICINE - PEDIATRICS
GERIATRICS
New Patients Welcome
Sequoia Medical Center
590 W Putnam Av Ptrvl 784 5755

WAGNER MALCOLM MD
Sequoia Medical Center
590 W Putnam Av Ptrvl 784 6550
If No Answer Call 781 3700

WEISENBERGER JOHN E MD
GENERAL PRACTICE
PEDIATRICS & OBSTETRICS
Diplomate American Board of Family Practice
Practica de Medicina Familiar
Suite D
912 N Douty Hnfrd 582 2846

Wileman Thos E MD
40657 Road 128 Cut 528 3860

WONG JOHN W H MD
Visalia Medical Clinic Inc
Board Certified
Day & Night Call
5400 W Hillsdale Av Vis 733 5222

WOODLAKE FAMILY HEALTH CENTER
Dr. James L. Irvine, MD
180 E Antelope Av Wdlk 564 8067

YASUNA MARTIN S MD
Visalia Medical Clinic Inc
Day & Night Call
5400 W Hillsdale Dr Vis 733 5222

Foot Surgery

See M.D. Guide Headings Of
Orthopedic Surgery; Surgery Foot
Or See Physicians-Surgeons, D.P.M. (Podiatrists) In Nevada
Or Podiatrists-D.P.M. (Foot Surgeons) In California

Forensic Pathology

See
Pathology

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AU ALVIN MD
STOMACH • COLON
PANCREAS • LIVER
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Medicare Accepted
Member, Most Insurances
440 Greenfield Av Hnfrd 584 6499
591 E Merritt Av Tulare 686 6476
1827 S Court Vis 625 3383

BROWN JEFFRY A MD
Kaweah Sierra Medical Group Inc.
Board Certified
Day Or Night Call
202 W Willow Vis 732 4183

CUELLAR RAFAEL E MD
INTERNAL MEDICINE &
DISEASES OF THE STOMACH INTESTINES AND LIVER
Endoscopy & Colonoscopy
MOST INSURANCE ACCEPTED
DAY OR NIGHT CALL
627-0566
235 E Noble Av Vis 627 0566

KUMAR PARMOD MD
GASTROENTEROLOGY
SPECIALIZING IN
TREATMENT OF DISEASES OF THE STOMACH, SMALL INTESTINE & COLON, GALLBLADDER, LIVER & PANCREAS
DAY OR NIGHT CALL
686-6990
298 Vermont Av DBA 591 2851
858 N Cherry Tlr 686 6990

KUMAR PARMOD MD
298 Vermont Av Dba 591 2851

TABIBIAN NESHAN MD
Visalia Medical Clinic
Board Certified
Day & Night Call
5400 W Hillsdale Dr Visalia .. 733 5222

Gynecology

See
Obstetrics And Gynecology

Hair Loss

See
Dermatology (Skin)
Plastic & Reconstructive Surgery

Heart

See
Cardiology

Hematology (Blo[illegible]

CHIU CHING-TSUNG MD
1044 N Cherry Tlr .....

HAVARD ROBERT A JR MD
Visalia Medical Clinic Inc.
Board Certified
Day & Night Call
5400 W Hillsdale Dr Vis ...

HSU DEAN MD
Visalia Medical Clinic Inc
Board Certified
5400 W Hillsdale Dr Vis .

Hemorrhoids

See
Internal Medicine
Surgery-Colon And R[illegible]
Surgery-General

Hernia

See
Surgery-General

Immunology

Sidhu Rabinder S MD
807 W Oak Av Vis .....

Infectious Disea

WILLIAMS PAUL L MD
Visalia Medical Clinic Inc.
Board Certified
Day & Night Call
5400 W Hillsdale Dr Vis .

Infertility

BAKAR NADIR JAMES MD FACOG
INFERTILIT
ASSISTEC
REPRODUCT
& IVF
Suite 210
7055 N Fresno St Fresno..

Inoculations & Immunizations

See
Immunology
Infectious Disease:
Internal Medicine

Internal Medic

ABALOS ARTURO MD
1004 14th Av Delano ...
Or Call .....

AU ALVIN MD
440 Greenfield Av Hnfrd.
591 E Merritt Av Tlr ...

AU ALVIN MD
1827 S Court Vis .....

Batin F Patricia MD
460 Greenfield Av Hnfrd..

(Continued Next

BEST AVAILABLE COPY

LITA O'NEILL BLATNER #041996
County Counsel of the County
of Tulare, and
KATHLEEN BALES-LANGE,
Deputy County Counsel #094765
2900 W. Burrel, County Civic Center
Visalia, California 93291
Telephone: (209) 733-6263

Attorneys for Defendants,
County of Tulare

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC DECLARATION VERNON RIBEIRO IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION Date: May 1, 1995 Time: 10:00 a.m. Courtroom: (Filed Apr. 5, 1995)

I, Vernon Ribeiro, declare as follows:

1. I am over the age of eighteen years. If called to testify as a witness I could competently testify to the matters contained herein of my own personal knowledge.

2. I am the Employee Relations Specialist with the County of Tulare, employed by the Tulare County Personnel Department.

3. In late November I was asked by either Jim Brinkheroff [sic] or Robert Atwood to arrange for a fitness for duty examination for Lydia Moran. I asked for a referral to a local psychologist or psychiatrist from Fimbres Adjusters, the County's third party Worker's Compensation administrators. Fimbres referred me to Dr. Bruce Reed in Visalia, Jim Brinkerhoff was not involved in the specific selection of Dr. Reed in any way whatsoever.

4. I made an appointment with Dr. Reed for Mrs. Moran and sent her a letter advising her of that appointment. The letter was a "form" type letter. A true copy of that letter is attached hereto as Exhibit A and incorporated herein as though set forth in full.

5. After Mrs. Moran was referred to Dr. Reed but before we received his report, Mrs. Moran telephoned me to ask about her status. I told her that her status would not change until we received Dr. Reed's report. I told her I would telephone her and advise her of the general finding of the report when I received it.

6. I subsequently received a report from Dr. Reed. A true copy of that report is attached hereto as Exhibit b and incorporated herein as though set forth in full.

7. On or about January 20, 1995, the day after I received Dr. Reed's report, I advised Mrs. Moran by telephone of Dr. Reed's findings. Mrs. Moran requested a copy of Dr. Reed's report. After I confirmed with counsel

and with Dr. Reed that it was acceptable to release it, I directed that a copy of Dr. Reed's report be sent to Mrs. Moran. I am informed and believe to be true that a copy of said report was in fact placed in the United States mail addressed to her.

Executed this 4th day of April 1995, at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and as to those matters I believe them to be true.

/s/ Vernon Ribeiro
VERNON RIBEIRO

EXHIBIT A

County of Tulare
PERSONNEL
Department

2900 West Burrel • Visalia, CA 93291-4583 • (209) 733-6266

December 7, 1994

Lydia M. Moran
1270 N. Laspina
Tulare, CA. 93274

RE: Fitness Evaluation

Dear Ms. Moran:

As per our telephone conversation on Thursday, December 1, 1994, this letter will serve as confirmation of the fitness evaluation scheduled for you with Dr. Bruce Reed. You are *directly ordered* to appear for a fitness evaluation on Wednesday, December 14, 1994, at 2950 S. Mooney Boulevard, Visalia, at 10:00 AM. Doctor Reed's phone number is 627-9591. You are *directly ordered* to fully comply with the Doctor during the course of evaluation.

You will be notified in writing as soon as possible as to the results of the test and the County's position.

Sincerely,

/s/ Vern Ribeiro
Vern Ribeiro
Employee Relations Specialist

cc: Dr. Bruce Reed
Debi Russell
File

EXHIBIT B

BRUCE T. REED, Ph.D.

Licensed Psychologist
PSY 9324

January 9, 1995

Vern Ribeiro
Employee Relations Specialist
Tulare County Personnel Department
2900 West Burrel
Visalia, CA 93291-4583

RE: LYDIA M. MORAN

SUBJ: PSYCHOLOGICAL FITNESS FOR DUTY EVALUATION

Dear Mr. Ribeiro:

Pursuant to your request I psychologically evaluated Lydia M. Moran. Mrs. Moran was initially seen on 12/14/94; she participated in approximately 2 hours of face-to-face evaluation and completed objective personality testing which took her approximately 2 hours to finish. Due to the holiday schedule an appointment on 01/06/95 was set. On 01/06/95 she completed approximately 1¼ hours of combined evaluation and cognitive-intellectual assessment. Mrs. Moran understood the nature of the referral and that a report would be forwarded to the referring party. She chose to participate with these scheduled appointments.

The purpose of these scheduled appointments was for this report only.

Mrs. Moran provided recent documents for me to review prior to the first appointment. Records from Fimbres Adjusters, Inc./Fresno were also reviewed.

In my opinion, Lydia M. Moran is not psychologically fit for return to full duty as an Office Assistant for Tulare County at this time.

The conditions contributing to this "unfitness" have the potential to be treated to the point where "fitness" could possibly be expected.

Individual psychotherapy is very strongly recommended to be conducted regularly over a 6 month (minimum). This treatment should include medication referral should the treating provider deem it necessary. Following a successfully completed course of treatment re-evaluation is recommended.

My opinion is based upon clinical evaluation time spent with Mrs. Moran, current results of psychological tests, documents provided by Mrs. Moran and health records forwarded by Fimbres Adjusters, Inc./Fresno.

If there are any additional questions please do not hesitate to contact me at 627-9591.

Sincerely,

/s/ Bruce T. Reed,
Bruce T. Reed, Ph.D.
Licensed Psychologist
PSY 9324

BTR:cmr

cc: file

LITA O'NEILL BLATNER #041996
County Counsel of the County of
Tulare, and
KATHLEEN BALES-LANGE,
Deputy County Counsel #094765
2900 W. Burrel, County Civic Center
Visalia, California 93291
Telephone: (209) 733-6263

Attorneys for Defendant,
County of Tulare

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC DECLARATION OF JIM BRINKERHOFF IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION Date: May 1, 1995 Time: 10:00 a.m. Courtroom: (Filed Apr. 5, 1995)

I, Jim Brinkerhoff, declare as follows:

1. I am over the age of eighteen years. If called to testify as a witness I could competently testify to the matters contained herein of my own personal knowledge.

2. I am the Personnel Director of the County of Tulare and have held that position since November 17,

1991, and was Acting Personnel Director from May 26, 1991. Before becoming the Personnel Director I was the Tulare County Employee Relations Officer; I was first appointed to that position in 1981.

3. I was advised in late November that Lydia Moran had requested reinstatement to employment. I reviewed the statement from Mrs. Moran's physician, which is attached to the Declaration of Kathleen Bales-Lange as Exhibit F page 6 and incorporated herein as though set forth in full. This statement is not on a form developed or provided by Tulare County.

4. One of my responsibilities is the oversight of administration of the County's self-insured Workers' Compensation claims. Accordingly, I was personally aware that Mrs. Moran had previously claimed a psychiatric disability, and claimed that this disability prevented her from working.

5. Since I was aware that Mrs. Moran had been medically prevented from working in the past, I directed the Employee Relations staff to schedule her for a "fitness for duty" exam. This direction was given in accord with the County's policy and practice of ensuring that disabled individuals are safely able to return to work. That policy has been in effect at least since I became the Personnel Director.

6. I received a letter from Mrs. Moran dated December 8, 1994, a true copy of which is attached hereto as Exhibit A and incorporated herein as though set forth in full. I replied to Mrs. Moran's letter; a true copy of my reply is attached hereto as Exhibit B and incorporated herein as though set forth in full.

7. I am informed by Kathleen Bales-Lange, the County's attorney, and believe to be true that Mrs. Moran alleged in a telephone conversation with Ms. Bales-Lange that I somehow arranged for Mrs. Moran to fail the fitness for duty examination. In fact, I did not have any conversation with Dr. Reed, the County's examiner, or any other person regarding the content or desired outcome of Mrs. Moran's examination and did not know until after the exam who the examining physician was.

8. On or about February 22, 1995, I was advised by Kathleen Bales-Lange that Mrs. Moran wished to administratively appeal Dr. Reed's finding. I advised Ms. Bales-Lange that the County's policy and practice in a situation where the employee's doctor and the County's doctor disagree as to the employee's fitness, the County sends the employee to a third doctor for an opinion. That third opinion then becomes the "tie breaker" and will determine whether the employee is fit for duty. The "tie breaker" doctor is selected by the County.

9. Since I had been previously advised by Ms. Bales-Lange that Mrs. Moran believed I had interfered with her examination by Dr. Reed, I instructed Ms. Bales-Lange to advise Mrs. Moran's attorney that in her case we would deviate from the usual practice and provide Mrs. Moran with a list of doctors from which she could choose.

10. I am informed by Ms. Bales-Lange and believe to be true that Mrs. Moran has rejected the administrative remedy offered to her in its totality. Without the "tie breaker" doctor I cannot order Mrs. Moran reinstated to employment, as I have reason to believe from Dr. Reed's report that she presently cannot work safely.

Executed this 3rd day of April 1995, at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and as to those matters I believe them to be true.

/s/ Jim Brinkerhoff
JIM BRINKERHOFF

December 8, 1994

Jim Brinkerhoff, Personnel Director
2900 West Burrel
Visalia, CA 93291-4583

Dear Mr. Brinkerhoff:

On Friday, December 2, 1994, I telephoned you regarding the problem I was having in getting a response from Mr. Bob Atwood in personnel, regarding my Return to Work Release, dated, November 7, 1994.

I received the following letter from Mr. Vern Ribeiro, Employee Relations Specialist. * see letter dated December 7, 1994.

A statement in the letter, "***directly ordered*** stated twice (2) intentionally implies that I have disregarded previous request from Tulare County for a fitness evaluation. Since this is not true I wish to state the following facts:

On November 7, 1994 my Return To Work Release was hand delivered to the Safety Department and I was instructed to wait until I heard from Bob Atwood from Personnel if a further medical evaluation would be required. The week prior to Thanksgiving when I had not heard from Mr. Atwood I telephoned him and Mr. Atwood stated that he knew nothing about my status. Mr. Atwood called me later in the day and told me to wait until I heard from 'DPSS' (Department of Social Services).

As the end of November approached and I had not heard from 'DPSS' I called and 'DPSS' referred me back to Mr. Atwood from Personnel. I left various messages

with Mr. Atwood and was told he was at meetings and finally that he was out on sick leave.

On November 30, 1994 not wanting to disobey my physician's Return To Work order. I went to personnel and was referred to Mr. Vern Ribeiro, Employee Relations Specialist. Mr. Ribeiro told me that Mr. Atwood was out ill and he had not informed him of my work status. I then told Mr. Ribeiro that I would report to personnel for work on December 1, 1994 per my Return To Work dated November 7, 1994. I told Mr. Ribeiro I did not want to be out of compliance. Mr. Ribeiro then told me to wait until he spoke to Mr. Atwood and I complied. The following day it was late in the afternoon and since Mr. Ribeiro had not telephoned me I called and he told me that Mr. Atwood had informed him that it was *standard* policy that I have a fitness evaluation prior to reinstatement.

On December 14, 1994 I will present myself for a fitness evaluation (I have been waiting since November 7, 1994) but let the record show that I returned my Return to Work Release to the Safety Department IMMEDIATELY as stated. But there seems to be two sets of rules one for employees and a lesser standard for administration in Personnel

In closing after my medical examination I hope to resume my role as a productive employee instead of a burden to the taxpayer.

Sincerely,

/s/ Lydia Moran
Lydia Moran

cc:

Vern Ribeiro, Employee Relations Specialist
Dr. Bruce Reed
Debi Russel
File copy
Supervisor William Sanders District 1
Supervisor Mel Richmond District 2
Supervisor Bill Maze District 3
Supervisor Charles Harness District 4
Supervisor Jim Maples District 5
Kathleen Bales-Lange, principle county counsel

COUNTY OF TULARE PERSONNEL DEPARTMENT

2900 West Burel ■ Visalia, CA 93291-4583 ■ (209) 733-6266

December 7, 1994

Lydia M. Moran
1270 N. Laspina
Tulare, CA 93274

RE: Fitness Evaluation

Dear Ms. Moran:

As per our telephone conversation on Thursday, December 1, 1994, this letter will serve as confirmation of the fitness evaluation scheduled for you with Dr. Bruce Reed. You are *directly ordered* to appear for a fitness evaluation on Wednesday, December 14, 1994, at 2950 S. Mooney Boulevard, Visalia, at 10:00 AM. Doctor Reed's phone number is 627-9591. You are *directly ordered* to fully comply with the Doctor during the course of the evaluation.

You will be notified in writing as soon as possible as to the results of the test and the County's position.

Sincerely,

/s/ Vern Ribeiro
Vern Ribeiro
Employee Relations Specialist

cc: Dr. Bruce Reed
Debi Russell
File

LITA O'NEILL BLATNER #041996
County Counsel of the County of Tulare, and
KATHLEEN BALES-LANGE, Deputy County Counsel #094765
2900 W. Burrel, County Civic Center
Visalia, California 93291
Telephone: (209) 733-6263

Attorneys for Defendant, County of Tulare

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC DECLARATION OF TRAVIS STEAGALL IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION Date: May 1, 1995 Time: 10:00 a.m. Courtroom:

I, Travis Steagall, declare as follows:

1. I am over the age of eighteen years. If called to testify as a witness I could competently testify to the matters contained herein of my own personal knowledge.

2. I am the Risk Manager of the County of Tulare.

3. I requested a warrant in the amount of twenty five thousand dollars [$25,000.00] payable to Lydia Moran as part of a settlement agreement in the above entitled action. I recieved [sic] the warrant on August 18, 1994. Thereafter the warrant was delivered to Mrs. Moran. I do not have available the exact date of delivery.

4. I am informed by the Tulare County Auditor's staff and believe to be true that said warrant was negotiated by Mrs. Moran on or about September 15, 1994.

Executed this 3rd day of April 1995, at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and as to those matters I believe them to be true.

/s/ Travis Steagall
TRAVIS STEAGALL

LITA O'NEILL BLATNER #041996
County Counsel of the County of
Tulare, and
KATHLEEN BALES-LANGE,
Deputy County Counsel #094765
2900 W. Burrel, County Civic Center
Visalia, California 93291
Telephone: (209) 733-6263

Attorneys for Defendant,
County of Tulare

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC DECLARATION OF PAMELA J. RUTHERFORD IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT AGREEMENT AND PETITION FOR INSTRUCTION Date: May 1, 1995 Time: 10:00 a.m. Courtroom: (Filed Apr. 5, 1995)

I, Pamela J. Rutherford, declare as follows:

1. I am over the age of eighteen years. If called to testify as a witness I could competently testify to the matters contained herein of my own personal knowledge.

2. I am the Worker's Compensation Manager with the County of Tulare.

3. I have discussed her case with Fimbres Adusters [sic], the County's third party Workers' Compensation adminstrator [sic]. Through that discussion I am informed and believe to be true that Mrs. Moran's Workers' Compensation claim was settled on July 26, 1994, and approved by a Workers' Compensation Appeals Board judge.

4. I am further informed by staff of Fimbres Adjusters and believe that a warrant in the amount of $17,600.00 was forwarded to Mrs. Moran in the Workers' Compensation matter on August 22, 1994 and was subsequently negotiated by her. The balance of $2,400.00 was forward to Mrs. Moran's attorney.

Executed this 4 day of April 1995, at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and as to those matters I believe them to be true.

/s/ Pamela J. Rutherford
PAMELA J. RUTHERFORD

LYDIA MARY MORAN
1270 NORTH LASPINA
TULARE, CA 93274
Telephone (209) 685-8430

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

LYDIA MARY MORAN Plaintiff, v. TULARE, COUNTY OF, DEPARTMENT OF HEALTH SERVICES Defendants.	Case No. CV-F-92-5694 REC DECLARATION OF LYDIA MARY MORAN AND REQUEST THE COURT ORDER THE COUNTY TO COMPLY WITH THE TERMS OF THE SETTLEMENT AGREEMENT Date: May 1, 1995 Time: 10:00 a.m. Courtroom:

I Lydia Mary Moran declare as follows:

1. I, Lydia Mary Moran was denied reinstatement per the terms of the Settlement Agreement in U.S. District, Fresno, CA and dictated as a matter of record by Magistrate Dennis L. Beck, on June 10, 1994 in U.S. District Court.

2. The following were the steps that I took in good faith regarding my reinstatement:

3. On November 7, 1994, I presented to County personnel A Return To Work Release signed by Doctor Miyakawa. The effective date of return to work was December 1, 1994. Doctor Miyakawa was the best judge

of my mental and physical fitness because he originally placed me on stress leave in April 1990.

[See copy of Dr. Miyakawa's medical report dated April 4, 1990. and Return To Work Release signed by Doctor Miyakawa dated November 7, 1994.]

4. On December 14, 1994 I was ordered to report to Doctor Bruce Reed for a fitness evaluation. [See attached letter dated December 7, 1994.]

5. Doctor Reed's questioning was very subjective and he could not understand why I wanted to return to work.

a. Doctor Reed insisted that I answer all the questions listed in the test, even though, the front of the test said I could answer True/False or leave blank.

b. When I told Doctor Reed that I had left questions blank because what was being stated did not apply to me, Doctor Reed insisted that I not leave any questions blank. In the reception room, in front of his secretary, Dr. Reed asked me approximately thirty questions that I had left blank and asked me to answer either True/False. I proceeded to answer the questions even though they did not apply to how I was presently feeling, only because Doctor Reed insisted that I could not leave any questions blank, and because I was ordered to fully comply with Doctor Reed. [See attached letter dated December 7, 1994.]

c. During a portion of the examination Doctor Reed would repeatedly say, "you are getting frustrated aren't you?" When I told him I was not frustrated he kept insisting that I was.

d. Throughout the evaluation Doctor Reed never once commended me for attempting to resume my life in the workplace.

e. It has been my personal experience that all doctors are happy to see a patient who has been on disability resume a normal lifestyle, etc., but this was not my experience with Doctor Reed.

6. On Friday, January 20, 1995, I telephoned Mr. Ribeiro Employee Relation Specialist, and he told me that because of Doctor Reed's subjective psychological opinion, I would not [sic] reinstated.

7. Doctor Miyakawa's medical release was totally ignored.

8. On January 20, 1995, I talked to Brian Thovurn, Administrative Aide for the Tulare County Board of Supervisors. I asked Mr. Thovurn if I could set up an informal meeting with the County Board of Supervisors because I believed county personnel were violating the Settlement Agreement by not allowing me to be reinstated. Mr. Thovurn said I could not meet with the supervisors to discuss the terms of the Settlement Agreement, and referred me to county counsel, Kathleen Bales-Lange.

9. Ms. Bales-Lange stated that there was nothing she could do to have personnel abide by the terms of the Settlement Agreement regarding my reinstatement. I told Ms. Bales-Lange that I did not want to have to return to court to have the County of Tulare honor the Settlement Agreement regarding my reinstatement but Ms. Bales-Lange said to do what I had to do.

10. I tried to get legal counsel to get the County to comply with the terms of the Settlement Agreement regarding reinstatement but attorney William J. Smith was not able to represent me. [See letter dated February 28, 1995, where Ms. Bales-Lange in paragraph two, sentence number three states that Mrs. Moran's situation is somewhat unusual.]

11. I have no doubt that if I had been reinstated per the terms of the Settlement Agreement and Doctor Miyakawa's medical release of December 1, 1994, I would have been a productive employee for the County.

12. Enclosed are certificates of completion of computer classes that I took on weekends and a community class I had signed up for at the College of Sequoias. The community class was cancelled after being rescheduled twice. [See copies of certificates and College of Sequoias class I had enrolled in]

13. I also met Mr. Rudy Fernandez, Administrator of College of Sequoias Community classes and discussed the possibilities of a community class dealing with ethnic sensitivity in places of employment that would benefit both employee and employer. Mr. Fernandez suggested I telephone Nazario Carrillo a community class instructor to discuss the possibility of starting an ethnic sensitivity community class. I telephoned Nazario Carrillo and he agreed that an ethnic sensitivity class would be very beneficial. I told Mr. Carrillo I would sign up for his Attitude Fitness Seminar and during his class initiate ideas for a ethnic sensitivity community class.

14. The classes I took in preparation for reinstatement and my frame of mind regarding my concern for

both employee and employer when suggesting community classes in ethnic sensitivity shows I was ready to return to work with a positive mental attitude and a total contradiction to "county expert" Doctor Reed's psychological opinion.

15. I now have to place all my mental and physical energies into once again defending in pro per, what had already been guaranteed in the Settlement Agreement regarding reinstatement.

15. [sic] I respectfully request that this honorable court find that the County of Tulare has not complied with the terms of the Settlement Agreement regarding my reinstatement.

16. The failure of the County of Tulare to comply with terms of the Settlement Agreement regarding reinstatement has caused me a great deal of anguish and I no longer feel that I can safely work with the County of Tulare because of obvious retaliation and harassment.

Executed this 19th day of April, 1995, Tulare, CA.

I declare under penalty of purjury that the foregoing is true and correct, except such matters as are alleged upon information and belief, and to those matters I believe them to be true.

By /s/ Lydia Mary Moran
Lydia Mary Moran
In pro per